

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/1. INTRODUCTION/801. Scope of title.

NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)

1. INTRODUCTION

801. Scope of title.

This title covers cultural institutions, moveable and immovable cultural heritage, general provisions relating to the international protection of cultural heritage¹, and the Ordnance Survey².

The cultural institutions covered include those established either by statute or royal charter and comprise those of a general cultural nature³, museums and galleries⁴, libraries⁵, and other institutions of a literary, scientific or cultural nature⁶. Moveable cultural heritage includes treasure⁷, the loan⁸, import and export of cultural objects⁹, and the control of illicit trade in cultural objects¹⁰. Immovable cultural heritage includes world heritage sites¹¹, archaeological sites and ancient monuments¹², historic shipwrecks and military remains¹³, and historic buildings¹⁴, gardens¹⁵ and battlefields¹⁶.

1 See PARA 1104 et seq.

2 See PARA 1110 et seq.

3 See PARA 803 et seq. As to the National Trust see PARA 979 et seq.

4 See PARA 820 et seq.

5 See PARA 897 et seq.

6 See PARA 936 et seq.

7 See PARA 1084 et seq.

8 See PARA 1090 et seq.

9 See PARAS 1092-1093.

10 See PARA 1094 et seq.

11 See PARA 1000.

12 See PARA 1001 et seq.

13 See PARA 1064 et seq.

14 See PARA 1068 et seq.

15 See PARAS 1080-1082.

16 See PARA 1083.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/1. INTRODUCTION/802. Secretary of State and the Welsh Ministers.

802. Secretary of State and the Welsh Ministers.

Although administrative responsibility for the matters within the scope of this title¹ has over the years rested with a number of different ministers it is now almost entirely vested in the Secretary of State².

Under the arrangements originally made³ for devolved government in Wales⁴, a number of ministerial functions relating to the matters covered by this title were transferred, subject to prescribed exceptions and qualifications, to the National Assembly for Wales⁵. Following the re-organisation of devolved government in Wales under the Government of Wales Act 2006, the functions transferred to the Assembly are now exercisable by the Welsh Ministers⁶.

Her Majesty may by Order in Council: (1) provide for the transfer to the Welsh Ministers, the First Minister or the Counsel General of any function so far as exercisable by a Minister of the Crown in relation to Wales; (2) direct that any function so far as so exercisable is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General concurrently with the Minister of the Crown; or (3) direct that any function so far as exercisable by a Minister of the Crown in relation to Wales is to be exercisable by the Minister of the Crown only with the agreement of, or after consultation with, the Welsh Ministers, the First Minister or the Counsel General⁷.

1 As to the scope of this title see PARA 801.

2 In any enactment, 'Secretary of State' means one of Her Majesty's principal secretaries of state: see the Interpretation Act 1978 s 5, Sch 1. As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355. Where administrative responsibility remains vested in a particular Minister of the Crown this is stated in the text in the paragraph in this title concerned.

3 Ie under the Government of Wales Act 1998.

4 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as originally enacted) (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (consequential alteration of boundary following alteration of watercourse) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 90); Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 PARA 9). As to local government areas see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq; and as to boundary changes see **LOCAL GOVERNMENT** vol 69 (2009) PARA 54 et seq.

For the purposes of the Government of Wales Act 1998 and the Government of Wales Act 2006 (see the text to note 6), 'Wales' includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea: Government of Wales Act 1998 s 155 (definition substituted by the Government of Wales Act 2006 s 160(1), Sch 10 paras 41, 54(1), (4)); Government of Wales Act 2006 s 158(1). The Secretary of State may by order determine, or make provision for determining, for the purposes of this definition of 'Wales' any boundary between the parts of the sea which are to be treated as adjacent to Wales, and those which are not: s 158(3). For the purposes of this definition the boundary between those parts of the sea within the Severn and Dee Estuaries which are to be treated as adjacent to Wales and those which are not is, in each case, a line drawn between the co-ordinates set out in the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 3: art 6; Government of Wales Act 2006 Sch 11 para 26. An Order in Council transferring ministerial functions under the Government of Wales Act 2006 s 58 (see the text to note 7) may include any provision that may be included in an order under s 158(3): s 158(4). No order is to be made under s 158(3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament: s 158(5). As to territorial waters see **WATER AND WATERWAYS** vol 100 (2009) PARA 31. As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

5 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 See the Government of Wales Act 2006 s 162(1), Sch 11 para 30. 'Welsh Ministers' means the First Minister and the Welsh Ministers appointed under the Government of Wales Act 2006 s 48: see s 45(2). Where any function is transferred to the Welsh Ministers this is referred to in the specific paragraph or paragraphs dealing with that function in this title. As to the First Minister and the Welsh Ministers see the Government of Wales Act 2006 ss 46-48; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to devolved government in Wales generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the exercise of transferred functions and the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see Sch 11 paras 33-35 (in the case of functions transferred to the Assembly by Order in Council under the Government of Wales Act 1998 s 22) or the Government of Wales Act 2006 Sch 3 para 9 (in the case of functions transferred to the Welsh Ministers by Order in Council under s 58: see the text to note 7); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

7 See the Government of Wales Act 2006 s 58, Sch 3; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. See also note 4.

UPDATE

802 Secretary of State and the Welsh Ministers

NOTE 4--Government of Wales Act 2006 s 158(3) substituted: Marine and Coastal Access Act 2009 s 43(3).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(1) THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND/803. Constitution.

2. INSTITUTIONS

(1) THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND

803. Constitution.

A body known as the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage') was established in 1983¹. It is a body corporate² whose members are appointed by the Secretary of State³.

The Commission must appoint, with the Secretary of State's approval, a chief officer who is responsible for the general exercise of the Commission's functions⁴; and may appoint such other employees as it thinks fit⁵. The Commission may regulate its own procedure, including its quorum⁶. The validity of any proceedings of the Commission is not affected by any vacancy among the members, or by any defect in the appointment of any person as a member or chairman or deputy chairman, or by a failure to comply with disclosure provisions⁷. A document purporting to be duly executed under the seal of the Commission, or to be signed on the Commission's behalf, must be received in evidence and, unless the contrary is proved, be deemed to be so executed or signed⁸.

The Commission must constitute at least one committee to advise it on ancient monuments and at least one to advise it on historic buildings, and may constitute other committees to advise it on those or other aspects of its functions⁹.

The Commission must keep proper accounts and records¹⁰ and prepare an annual statement of accounts¹¹. It must also make to the Secretary of State an annual report on the exercise of its functions¹², which must include a copy of the statement of accounts and of the report thereon of the Comptroller and Auditor General¹³, and a statement of action taken by the Commission to promote the enjoyment of ancient monuments and buildings by disabled members of the public¹⁴. The Secretary of State must lay a copy of each such report before each House of Parliament¹⁵.

The Commission must furnish the Secretary of State with such information relating to its property and the discharge and proposed discharge of its functions as he may require, and for that purpose it must permit any person¹⁶ authorised by him to inspect and make copies of any accounts or other documents of the Commission and must give such explanation of them as that person or the Secretary of State may require¹⁷.

1 National Heritage Act 1983 s 32(1). On 1 April 1999 the Royal Commission on the Historical Monuments of England was merged with English Heritage. As to the historic environment in Wales see PARA 810. As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4.

2 National Heritage Act 1983 Sch 3 para 1. The Commission is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the members of the Commission and of their staff are not regarded as civil servants and the Commission's property is not regarded as property of, or held on behalf of, the Crown: see Sch 3 para 2 (amended by SI 1997/2971). The National Heritage Act 1983 Sch 3 para 2 is subject to the National Heritage Act 2002 s 3(5) (see PARA 805): see s 3(6). As to the legal status of bodies not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq. As to the civil service see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 549 et seq.

The Commission is a public body for the purposes of the Local Authorities (Goods and Services) Act 1970 in its application to England and Wales; and agreements which may be entered into by the Commission are restricted to agreements with a local authority for the supply of goods or materials, or the provision of administrative, professional or technical services, by that authority to the Commission: see the Local Authorities (Goods and Services) (Public Bodies) (English Heritage) Order 1997, SI 1997/1835, arts 2, 3; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 495.

3 See the National Heritage Act 1983 Sch 3 para 3. As to the Secretary of State see PARA 802 note 2. As to the remuneration of members see Sch 3 para 11. Members of the Commission are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1, Sch 1 Pt III (amended by the National Heritage Act 1983 Sch 3 para 14); and **PARLIAMENT** vol 78 (2010) PARA 908.

4 See the National Heritage Act 1983 Sch 3 para 4(1), (2). As to the Commission's functions see PARA 804.

5 See the National Heritage Act 1983 Sch 3 paras 4(3)-(8), 5 (amended by the Employment Rights Act 1996 s 240, Sch 1 para 23; Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)).

6 National Heritage Act 1983 Sch 3 para 6. A member of the Commission who is in any way directly or indirectly interested in a contract made or proposed to be made by the Commission, or in any other matter which falls to be considered by the Commission, must disclose the nature of his interest at a meeting of the Commission: Sch 3 para 7(1). For provisions relating to such disclosure see Sch 3 para 7(2)-(5).

7 National Heritage Act 1983 Sch 3 para 8.

8 National Heritage Act 1983 Sch 3 para 10(2). The fixing of the seal of the Commission must be authenticated by the signature of the chairman or of some other person authorised either generally or specially by the Commission to act for that purpose: Sch 3 para 10(1).

9 National Heritage Act 1983 Sch 3 para 9(1). The Commission may include as members of committees persons who are not members of the Commission: Sch 3 para 9(2).

10 National Heritage Act 1983 Sch 3 para 12(1).

11 See the National Heritage Act 1983 Sch 3 para 12(2)-(4). The accounts and statement of accounts must be audited by persons appointed in respect of each financial year by the Secretary of State (see Sch 3 para 12(5), (6) (Sch 3 para 12(5) amended by SI 2003/1326; National Heritage Act 1983 Sch 3 para 12(6) amended by SI 2008/948)). The Commission must send a copy of the statement of accounts prepared by it in each financial year to the Comptroller and Auditor General who must examine, certify and report thereon: see the National Heritage Act 1983 Sch 3 para 12(6A), (6B) (both added by SI 2003/1326). As soon as may be after receiving any report made by the auditors or the Comptroller and Auditor General the Commission must send a copy of the report to the Secretary of State: see the National Heritage Act 1983 Sch 3 para 13(5) (amended by SI 2003/1326). 'Financial year' means the period commencing with the day of the Commission's establishment and ending with the second 31 March following that day, and each successive period of 12 months: National Heritage Act 1983 Sch 3 para 12(7). 'Month' means calendar month: Interpretation Act 1978 s 5, Sch 1. As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

12 See the National Heritage Act 1983 Sch 3 para 13(1).

13 See the National Heritage Act 1983 Sch 3 para 13(2) (amended by SI 2003/1326).

14 See the National Heritage Act 1983 Sch 3 para 13(3) (amended by SI 2003/1326). As to the prohibition against discrimination in the provision of goods, facilities and services to disabled persons see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 582 et seq.

15 National Heritage Act 1983 Sch 3 para 13(4) (amended by SI 2003/1326). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

16 'Person', unless the contrary intention appears, includes a body of persons corporate or unincorporate: Interpretation Act 1978 s 5, Sch 1. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 2; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1101 et seq.

17 National Heritage Act 1983 Sch 3 para 13(6).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(1) THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND/804. General functions.

804. General functions.

It is the duty of the Historic Buildings and Monuments Commission for England¹ so far as practicable:

- 1 (1) to secure the preservation of ancient monuments² and historic buildings³ situated in England⁴;
- 2 (2) to promote the preservation and enhancement of the character and appearance of conservation areas⁵ situated in England⁶; and
- 3 (3) to promote the public's enjoyment of, and advance the public's knowledge of, ancient monuments and historic buildings situated in England and their preservation⁷,

in exercising the functions conferred on it⁸; but in the event of a conflict between those functions and that duty, those functions will prevail⁹.

The Commission must, so far as practicable, provide educational facilities and services, instruction and information to the public in relation to ancient monuments and historic buildings, with particular reference to those in England, and in relation to conservation areas situated in England¹⁰. It may give advice to any person in relation to ancient monuments, historic buildings and conservation areas situated in England, whether or not it has been consulted¹¹. It may, for the purpose of exercising its functions, carry out, or defray or contribute towards the cost of, research in relation to ancient monuments, historic buildings and conservation areas situated in England¹²; and it may, for the purpose of exercising its functions, make and maintain records in relation to ancient monuments and historic buildings situated in England¹³. It may produce souvenirs relating to ancient monuments or historic buildings situated in England and sell souvenirs¹⁴; and may defray or contribute to the cost of any activity undertaken by another person if the activity relates to ancient monuments or historic buildings¹⁵, and is of a kind which the Commission may itself undertake¹⁶.

Certain enactments¹⁷ are amended for the purpose of conferring functions on the Commission in relation to England, including functions of making grants in relation to historic buildings and conservation areas, acquiring historic buildings, acquiring or becoming guardian of ancient monuments, providing information and other services to the public in connection with affording them access to ancient monuments, and undertaking archaeological investigation and publishing the results, and for connected purposes, which include allowing the Secretary of State to approve lists of historic buildings compiled by the Commission, and imposing requirements for him to consult with the Commission before he includes a monument in the schedule of monuments or grants scheduled monument consent or designates an area of archaeological importance¹⁸.

The Commission may: (a) produce and publish, or sell, books, films or other informative material relating to foreign ancient monuments or foreign historic buildings¹⁹; (b) produce or sell souvenirs relating to such monuments or buildings²⁰; (c) provide (whether on payment or otherwise) advice, assistance or other services in respect of, or information relating to, such monuments or buildings²¹. The Commission may²² exploit any intellectual property²³, or any other intangible asset, relating to ancient monuments or historic buildings²⁴. The Commission may defray or contribute towards the cost of (i) any survey, excavation or other investigation undertaken in respect of any protected wreck²⁵; (ii) the removal of any protected wreck or of

any part of any protected wreck to another place for the purpose of preserving it²⁶; or (iii) the preservation and maintenance of any protected wreck²⁷.

For the purpose of exercising its functions the Commission may²⁸ enter into contracts and other agreements²⁹; acquire and dispose of property other than land³⁰; with the Secretary of State's consent, acquire land for providing the Commission with office or other accommodation and dispose of the land when no longer required for such accommodation³¹; and do such other things as the Commission thinks necessary or expedient³². With the Secretary of State's consent, the Commission may borrow temporarily by way of overdraft such sums as it may require for meeting its obligations and discharging its functions³³.

1 As to the Historic Buildings and Monuments Commission for England see PARA 803.

2 'Ancient monument' means any structure, work, site (including any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure or part thereof), garden or area which in the Commission's opinion is of historic, architectural, traditional, artistic or archaeological interest: National Heritage Act 1983 s 33(8) (definition amended by the National Heritage Act 2002 s 1(1), (2)). In the National Heritage Act 1983 s 33 references to ancient monuments in England include ancient monuments in, on or under the seabed within the seaward limits of the United Kingdom territorial waters adjacent to England: s 33(9) (s 33(9)-(11) added by the National Heritage Act 2002 s 1(1), (3)). For this purpose the Secretary of State may, by order, determine (or make provision for determining) any boundary between the parts of the United Kingdom territorial waters which are to be treated as adjacent to England, and those which are not: National Heritage Act 1983 s 33(10) (as so added). The power to make such an order is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 33(11) (as so added). The National Heritage (Territorial Waters Adjacent to England) Order 2002, SI 2002/2427, has been made. As to territorial waters see **WATER AND WATERWAYS** vol 100 (2009) PARA 31. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516. As to the Secretary of State see PARA 802 note 2.

'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Isle of Man nor the Channel Islands are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3. 'England' means, subject to any alteration of boundaries of local government areas, the area consisting of the counties established by the Local Government Act 1972 s 1 (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 5, 22), Greater London and the Isles of Scilly: Interpretation Act 1978 s 5, Sch 1. NB: references to 'England' in Acts passed before 1967 include references to Wales (see the Interpretation Act 1978 Sch 2 PARA 5(a)). As to the meaning of 'Wales' see PARA 802 note 4. As to local government areas see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq; and as to boundary changes see **LOCAL GOVERNMENT** vol 69 (2009) PARA 54 et seq. As to Greater London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29.

3 'Historic building' means any building which in the Commission's opinion is of historic or architectural interest: National Heritage Act 1983 s 33(8).

4 National Heritage Act 1983 s 33(1)(a). As to the historic environment in Wales see PARA 810.

5 'Conservation area' means an area designated as a conservation area under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 69 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1169); National Heritage Act 1983 s 33(8) (definition amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 60).

6 National Heritage Act 1983 s 33(1)(b).

7 National Heritage Act 1983 s 33(1)(c).

8 Ie by the National Heritage Act 1983 s 33(2)-(4) (see the text to notes 10-18), s 34 (see PARA 805).

9 National Heritage Act 1983 s 33(1). The Commission is a designated regulator for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 37(1), Sch 5: see **ADMINISTRATIVE LAW**.

10 National Heritage Act 1983 s 33(2)(a). The Commission may make such charges as it may from time to time determine in respect of anything so provided to any person other than a Minister of the Crown: s 33(6). As to the meaning of 'person' see PARA 803 note 16.

11 National Heritage Act 1983 s 33(2)(b). Without prejudice to the generality of this provision, the Commission may advise the Secretary of State with regard to the exercise of functions exercisable by him in relation to England under the Historic Buildings and Ancient Monuments Act 1953 and the Ancient Monuments

and Archaeological Areas Act 1979, whether or not it has been consulted: National Heritage Act 1983 s 33(4). The Commission may make such charges as it may from time to time determine in respect of anything given under s 33(2)(b) to any person other than a Minister of the Crown: s 33(6).

In relation to England, the Commission has the power to prosecute offences under the Ancient Monuments and Archaeological Areas Act 1979 Pt I (ss 1-32) (see ss 2, 19, 28; and PARAS 1012, 1037, 1042) or under the Planning (Listed Buildings and Conservation Areas) Act 1990 and to institute proceedings for an injunction to restrain any contravention of those provisions: National Heritage Act 1983 s 33(2A) (added by the Planning and Compensation Act 1991 s 29(1)). In relation to England, the Commission may make, or join in the making of, applications under the Leasehold Reform, Housing and Urban Development Act 1993 s 73(1), and may exercise, or participate in the exercise of, any rights or powers conferred by a scheme approved under s 70: National Heritage Act 1983 s 33(2B) (added by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 9). Such references to provisions of the Leasehold Reform, Housing and Urban Development Act 1993 include references to those provisions as they have effect by virtue of the Housing Act 1996 s 118(1): National Heritage Act 1983 s 33(2C) (added by the Housing Act 1996 s 118(6)). See further **LANDLORD AND TENANT** vol 27(3) (2006 Reissue) PARAS 1736-1739.

- 12 National Heritage Act 1983 s 33(2)(c).
- 13 National Heritage Act 1983 s 33(2)(d). As to powers of entry for these purposes see PARA 807.
- 14 National Heritage Act 1983 s 33(2)(e) (added by the National Heritage Act 2002 s 4(1)).
- 15 National Heritage Act 1983 s 33(2)(f)(i) (s 33(2)(f) added by the National Heritage Act 2002 s 7).
- 16 National Heritage Act 1983 s 33(2)(f)(ii) (as added: see note 15).
- 17 In the Historic Buildings and Ancient Monuments Act 1953, the Pastoral Measure 1968, the Redundant Churches and Other Religious Buildings Act 1969, the Ancient Monuments and Archaeological Areas Act 1979 and the Pastoral Measure 1983: see the National Heritage Act 1983 Sch 4.
- 18 National Heritage Act 1983 s 33(3). As to ancient monuments and archaeological areas see PARA 1002 et seq.
- 19 National Heritage Act 1983 s 33A(1)(a) (ss 33A, 33B added by the National Heritage Act 2002 s 4(2)). For this purpose 'ancient monument' and 'historic building' have the meanings given in the National Heritage Act 1983 s 33(8) (see notes 2, 3); and an ancient monument or historic building is 'foreign' if it is not situated in the United Kingdom, or in the case of a monument, in, on or under the seabed within the seaward limits of the territorial waters of the United Kingdom: s 33A(2) (as so added).
- 20 National Heritage Act 1983 s 33A(1)(b) (as added: see note 19).
- 21 National Heritage Act 1983 s 33A(1)(c) (as added: see note 19).
- 22 In without prejudice to any power of the Commission to do anything authorised by the National Heritage Act 1983 s 33B by virtue of s 33 (see the text to notes 1-18, 28-33) or s 33A (see the text to notes 19-21): s 33B(5) (as added: see note 19).
- 23 'Intellectual property' means (1) any patent, trade mark, registered design, copyright, design right, right in performance or plant breeder's right; and (2) any rights under the law of a country outside the United Kingdom which correspond or are similar to those rights: National Heritage Act 1983 s 33B(4) (as added: see note 19). As to patents see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 301 et seq. As to trade marks see **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 1 et seq. As to registered designs see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 681 et seq. As to copyright see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 54 et seq. As to design right see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 363 et seq. As to rights in performance see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 419 et seq. As to plant breeder's right see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1175 et seq.
- 24 National Heritage Act 1983 s 33B(1) (as added: see note 19). In s 33B(1) the references to 'ancient monuments' and 'historic buildings' are to ancient monuments and historic buildings within the meaning of s 33(8) (see notes 2, 3) that are (1) situated in England, or in the case of monuments, in, on or under the seabed within the seaward limits of the United Kingdom territorial waters adjacent to England (s 33B(2)(a) (as so added)); or (2) are foreign ancient monuments or foreign historic buildings within the meaning of s 33A(2) (see note 19) (s 33B(2)(b) (as so added)). An order under s 33(10) (see note 2) applies for the purposes of s 33B(2) as it applies for the purposes of s 33(9): s 33B(3) (as so added).
- 25 National Heritage Act 1983 s 33C(1)(a) (s 33C added by the National Heritage Act 2002 s 6). 'Protected wreck' means any site which (1) comprises, or comprises the remains of, any vessel or part thereof which is

protected by an order under the Protection of Wrecks Act 1973 s 1 (see PARA 1064) designating an area round the site as a restricted area (National Heritage Act 1983 s 33C(2)(a) (as so added)); and (2) is in, on or under the seabed within the seaward limits of the United Kingdom territorial waters adjacent to England (s 33C(2)(b) (as so added)). An order under s 33(10) (see note 2) applies for the purposes of head (2) above as it applies for the purposes of s 33(9); s 33C(3) (as so added).

26 National Heritage Act 1983 s 33C(1)(b) (as added: see note 25).

27 National Heritage Act 1983 s 33C(1)(c) (as added: see note 25). 'Maintenance' includes repairing and covering in of a protected wreck and the doing of any other act or thing which may be required for the purpose of repairing the wreck or protecting it from decay or injury: s 33C(2) (as so added).

28 Subject to the provisions of the National Heritage Act 1983 and any other Act: see s 33(5).

29 National Heritage Act 1983 s 33(5)(a).

30 National Heritage Act 1983 s 33(5)(b). In any Act, unless the contrary intention appears, 'land' includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land: Interpretation Act 1978 s 5, Sch 1.

31 National Heritage Act 1983 s 33(5)(c).

32 National Heritage Act 1983 s 33(5)(d).

33 National Heritage Act 1983 s 33(7). As to the finance of the Commission see PARA 809.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(1) THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND/805. Ministerial functions exercised by the Commission.

805. Ministerial functions exercised by the Commission.

If the Secretary of State for Culture, Media and Sport¹ directs the Historic Buildings and Monuments Commission for England² to exercise certain functions which are specified in the direction in relation to any monument, building or land³ so specified, the Commission must exercise them on his behalf in such manner as he may from time to time direct⁴. The functions which may be so specified are:

- 4 (1) functions of management exercisable by the Secretary of State, whether by virtue of an enactment⁵ or otherwise, in relation to any ancient monument⁶ or historic building⁷ situated in England⁸; and
- 5 (2) such functions exercisable by him for purposes connected with such a monument or building, in relation to any land which is situated in England and which adjoins or is in the vicinity of the monument or building⁹.

This provision does not apply to a function of making regulations or other instruments of a legislative character¹⁰, or a function exercisable in relation to any royal palace or land adjoining it or in its vicinity¹¹.

If the Secretary of State¹² directs the Commission to exercise functions¹³ which are specified in the direction¹⁴, in relation to any ancient monument or class of ancient monument so specified, the Commission must exercise them on his behalf in such manner as he may from time to time direct¹⁵. The Commission must comply with any such direction given to it¹⁶. In relation to any matter as respects which the Commission acts by virtue of such a direction, the Commission enjoys the same privileges, immunities and exemptions as those enjoyed in relation to that matter by the Secretary of State¹⁷.

1 As to the Secretary of State for Culture, Media and Sport see PARA 802 note 2.

2 As to the Historic Buildings and Monuments Commission for England see PARA 803.

3 As to the meaning of 'land' see PARA 804 note 30.

4 National Heritage Act 1983 s 34(2) (s 34(1), (2) amended by virtue of SI 1997/1744).

5 'Enactment' does not include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament: Interpretation Act 1978 s 5, Sch 1. As to the Scottish Parliament see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 'Ancient monument' means any structure, work, site (including any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure or part thereof), garden or area which in the opinion of the Secretary of State for Culture, Media and Sport is of historic, architectural, traditional, artistic or archaeological interest: National Heritage Act 1983 s 34(3) (definition amended by SI 1997/1744; National Heritage Act 2002 s 2(1)(a)).

7 'Historic building' means any building which in the opinion of the Secretary of State for Culture, Media and Sport is of historic or architectural interest: see National Heritage Act 1983 s 34(3) (amended by SI 1997/1744).

8 National Heritage Act 1983 s 34(1)(a) (as amended: see note 4). References to ancient monuments in England include ancient monuments in, on or under the seabed within the seaward limits of the United Kingdom territorial waters adjacent to England; and an order under the National Heritage Act 1983 s 33(10) (see PARA 804) applies for these purposes as it applies for the purposes of s 33(9): s 33(3A) (added by the National

Heritage Act 2002, s 2(1)(b)). As to the meanings of 'England' and 'United Kingdom' see PARA 804 note 2. As to territorial waters see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

9 National Heritage Act 1983 s 34(1)(b) (as amended: see note 4).

10 National Heritage Act 1983 s 34(4)(a).

11 National Heritage Act 1983 s 34(4)(b).

12 The National Heritage Act 2002 s 3 refers to the Secretary of State. As to the Secretary of State see PARA 802 note 2.

13 The National Heritage Act 2002 s 3 applies to any administrative function exercisable by the Secretary of State (whether by virtue of an enactment or otherwise) in relation to any ancient monument which is in, on or under the seabed within the seaward limits of the United Kingdom territorial waters s 3(1). However it does not apply to a function of making regulations or other instruments of a legislative character (s 3(4)(a)); or a function to which the National Heritage Act 1983 s 34 (see the text to notes 1-11) applies (National Heritage Act 2002 s 3(4)(b)). In s 3 'ancient monument' means any structure, work, site (including any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure or part thereof) or area which in the opinion of the Secretary of State is, or may be, of historic, architectural, traditional, artistic or archaeological interest: s 3(3).

14 Any direction must be in writing: National Heritage Act 2002 s 3(7). Any power conferred by s 3 to give a direction includes a power to vary or revoke the direction: s 3(8). 'Writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly: Interpretation Act 1978 s 5, Sch 1.

15 National Heritage Act 2002 s 3(2).

16 National Heritage Act 1983 s 3(9).

17 National Heritage Act 2002 s 3(5). The National Heritage Act 1983 Sch 3 para 2(1) (Commission not to be regarded as servant or agent of the Crown) (see PARA 803) is subject to the National Heritage Act 2002 s 3(5): s 3(6).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(1) THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND/806. Power to form companies.

806. Power to form companies.

The Historic Buildings and Monuments Commission for England¹ may form or take part in forming one or more bodies corporate which, or each of which, has as its main object or objects one or more of the following²:

- 6 (1) the production and publication or sale of books, films and other informative material relating to ancient monuments or historic buildings³;
- 7 (2) the provision (whether on payment or otherwise) of advice, assistance or other services in respect of, or information relating to, ancient monuments or historic buildings⁴;
- 8 (3) the production of souvenirs relating to ancient monuments or historic buildings, or sale of souvenirs⁵;
- 9 (4) the exploitation of any intellectual property⁶, or any other intangible asset, relating to ancient monuments or historic buildings⁷; and
- 10 (5) the provision in England of catering or car parking or other services or facilities for members of the public visiting ancient monuments or historic buildings⁸.

The Commission may hold interests in any such body, exercise rights conferred by the holding of interests in it, and provide financial or other assistance to or in respect of it, including assistance by way of guarantee of its obligations⁹.

These provisions are without prejudice to any power of the Commission to undertake any of the above functions by virtue of its general powers¹⁰.

1 As to the Historic Buildings and Monuments Commission for England see PARA 803.

2 National Heritage Act 1983 s 35(1).

3 National Heritage Act 1983 s 35(2)(a) (amended by the National Heritage Act 2002 s 5(1), (2)(a)). 'Ancient monument' and 'historic building' have the same meanings as in the National Heritage Act 1983 s 33 (see PARA 804 notes 2, 3). References to 'ancient monuments' and 'historic buildings' are to those which (1) are situated in England or, in the case of monuments, in, on or under the seabed within the seaward limits of the United Kingdom territorial waters adjacent to England; or (2) are foreign ancient monuments or foreign historic buildings within the meaning of the National Heritage Act 1983 s 33A(2)(b) (see PARA 804): s 35(3A) (s 35(3A)-(3C) added by the National Heritage Act 2002 s 5(1), (3)). An order under s 33(10) (see PARA 804) applies for the purposes of s 35(3A) as it applies for the purposes of s 33(9): s 35(3B) (as so added). As to the meanings of 'England' and 'United Kingdom' see PARA 804 note 2. As to territorial waters see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

4 National Heritage Act 1983 s 35(2)(ab) (added by the National Heritage Act 2002 s 5(1), (2)(b)).

5 National Heritage Act 1983 s 35(2)(b) (amended by the National Heritage Act 2002 s 5(1), (2)(c)).

6 'Intellectual property' means (1) any patent, trade mark, registered design, copyright, design right, right in performance or plant breeder's right; and (2) any rights under the law of a country outside the United Kingdom which correspond or are similar to those rights: National Heritage Act 1983 s 35(3C) (as added: see note 3). As to patents see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 301 et seq. As to trade marks see **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 1 et seq. As to registered designs see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 681 et seq. As to copyright see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 54 et seq. As to design right see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 363 et seq. As to rights in performance see **COPYRIGHT, DESIGN RIGHT AND**

RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 419 et seq. As to plant breeder's right see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1175 et seq.

7 National Heritage Act 1983 s 35(2)(ca) (added by the National Heritage Act 2002 s 5(1), (2)(d)).

8 National Heritage Act 1983 s 35(2)(d).

9 National Heritage Act 1983 s 35(3).

10 National Heritage Act 1983 s 35(5). The general powers referred to are those in s 33 (see PARA 804): see s 35(5).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(1) THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND/807. Power of entry to inspect land.

807. Power of entry to inspect land.

Any person¹ duly authorised in writing² by the Historic Buildings and Monuments Commission for England³ may at any reasonable time enter any land in England⁴ to inspect it with a view to obtaining information for inclusion in the Commission's records⁵. Such a person may take with him any assistance or equipment reasonably required and do there anything reasonably necessary for the purpose⁶. The Commission may not give an authorisation unless it knows or has reason to believe there is in, on or under the land an ancient monument or historic building⁷. An authorised person may not enter a dwelling house without the occupier's consent⁸, or demand admission to any land which is occupied unless 24 hours' notice has been given⁹; and if so required by or on behalf of the owner or occupier of the land, he must produce evidence of his authority before entering¹⁰. Where any works are being carried out on the land, a person acting in the exercise of the power must comply with any reasonable requirements or conditions imposed by the person by whom the works are being carried out for the purpose of preventing interference with or delay to the works¹¹.

Any person who intentionally obstructs an authorised person is guilty of an offence¹².

Where damage has been caused to land or chattels on land by the exercise of this power, any interested person may recover compensation from the Commission¹³. Any question of disputed compensation must be referred to and determined by the Upper Tribunal¹⁴.

1 As to the meaning of 'person' see PARA 803 note 16.

2 As to the meaning of 'writing' see PARA 805 note 14.

3 As to the Historic Buildings and Monuments Commission for England see PARA 803.

4 As to the meaning of 'land' see PARA 804 note 30. As to the meaning of 'England' see PARA 804 note 2.

5 National Heritage Act 1983 s 36(1). The records referred to are those made under s 33(2) (see PARA 804); see s 36(1).

6 See the National Heritage Act 1983 s 36(2).

7 See the National Heritage Act 1983 s 36(3). 'Ancient monument' and 'historic building' have the meanings given by s 33(8) (see PARA 804 notes 2, 3); s 36(3).

8 See the National Heritage Act 1983 s 36(4)(a).

9 See the National Heritage Act 1983 s 36(4)(b).

10 National Heritage Act 1983 s 36(5).

11 National Heritage Act 1983 s 36(6). However, any requirements or conditions imposed are not regarded as reasonable for this purpose if compliance with them would in effect frustrate the exercise of the power or the purpose of the entry: s 36(6).

12 National Heritage Act 1983 s 36(7). The penalty for such an offence is, on summary conviction, a fine not exceeding level 3 on the standard scale: s 36(7) (amended by the Statute Law (Repeals) Act 1993). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

13 See the National Heritage Act 1983 s 36(8). Any such claim for compensation must be made within the time and in the manner prescribed by the regulations made by the Secretary of State for that purpose; and the power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a

resolution of either House of Parliament: s 36(9). As to the provision made see the Ancient Monuments (Claims for Compensation) (England) Regulations 1991, SI 1991/2512, reg 3. As to the Secretary of State see PARA 802 note 2. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

14 National Heritage Act 1983 s 36(10) (amended by SI 2009/1307). In relation to the determination of any such question the Land Compensation Act 1961 s 4 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 716-717) applies (construing the references in that section to the acquiring authority as references to the Commission): s 36(10) (as so amended). As to the Upper Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(1) THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND/808. Functions in relation to monuments etc partly in England.

808. Functions in relation to monuments etc partly in England.

The Secretary of State¹ may by order² provide that the Historic Buildings and Monuments Commission for England³ is to have such functions as he thinks appropriate, having regard to its functions in relation to monuments, buildings, gardens, areas or sites situated in England⁴, and as are specified in the order⁵, in relation to the parts situated in England of any such monuments etc which are only partly so situated and which are specified in the order⁶. However, nothing in these provisions permits the Commission to be given a function of making regulations or other instruments of a legislative character⁷.

1 As to the Secretary of State see PARA 802 note 2.

2 The power to make such an order is exercisable by statutory instrument, and no such order must be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament: National Heritage Act 1983 s 37(5). Any such order may contain (1) amendments of s 33 (see PARA 804) or s 34 (see PARA 805) (s 37(2)(a)); and (2) amendments of any section or Schedule amended by Sch 4 (see PARA 804) (including consequential amendments relating to the parts of monuments, buildings, gardens, areas or sites not situated in England) (s 37(2)(b)). Any such order has effect subject to such supplementary provisions (which may include savings and transitory provisions) as may be specified in the order: s 37(3). At the date at which this volume states the law no such order had been made. As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941. As to the meaning of 'England' see PARA 804 note 2.

3 As to the Historic Buildings and Monuments Commission for England see PARA 803.

4 National Heritage Act 1983 s 37(1)(a). As to the Commission's functions see PARA 804.

5 National Heritage Act 1983 s 37(1)(b).

6 National Heritage Act 1983 s 37(1).

7 National Heritage Act 1983 s 37(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(1) THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND/809. Finance.

809. Finance.

The Secretary of State¹ may, out of money provided by Parliament², pay to the Historic Buildings and Monuments Commission for England³ such sums towards its expenditure as the Treasury⁴ may approve and defray such of its expenditure as the Treasury may approve⁵. The payment may be made on such conditions as the Secretary of State imposes with the Treasury's approval⁶.

1 As to the Secretary of State see PARA 802 note 2.

2 As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804.

3 As to the Historic Buildings and Monuments Commission for England see PARA 803.

4 'Treasury' means the Commissioners of Her Majesty's Treasury: Interpretation Act 1978 s 5, Sch 1. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 National Heritage Act 1983 s 38(1). As to the duty of the Commission to keep accounts see PARA 803.

6 National Heritage Act 1983 s 38(2).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(2) HISTORIC ENVIRONMENT IN WALES/810. Welsh Assembly Government and the historic environment.

(2) HISTORIC ENVIRONMENT IN WALES

810. Welsh Assembly Government and the historic environment.

The Welsh Ministers¹ may do anything which they consider appropriate to support archaeological remains², ancient monuments³, buildings and places of historical or architectural interest⁴, historic wrecks⁵, and museums and galleries in Wales⁶; and arts and crafts⁷, archives and historical records⁸, and cultural activities and projects relating to Wales⁹.

The Welsh Assembly Government¹⁰ maintains an historic environment division known as 'Cadw'¹¹ which aims to protect and sustain, encourage community engagement in, and improve access to, the historic environment of Wales, which includes historic buildings, ancient monuments, historic parks, gardens and landscapes, and underwater archaeology¹². The Welsh Assembly Government is advised by two panels of experts: the Ancient Monuments Advisory Board¹³, and the Historic Buildings Advisory Council¹⁴.

There is also a Royal Commission on the Ancient and Historical Monuments of Wales¹⁵.

1 As to the Welsh Ministers see PARA 802.

2 See the Government of Wales Act 2006 s 61(a).

3 See the Government of Wales Act 2006 s 61(b).

4 See the Government of Wales Act 2006 s 61(c).

5 See the Government of Wales Act 2006 s 61(d).

6 Government of Wales Act 2006 s 61(f). As to the meaning of 'Wales' see PARA 802 note 4.

7 See the Government of Wales Act 2006 s 61(e).

8 See the Government of Wales Act 2006 s 61(h).

9 Government of Wales Act 2006 s 61(i).

10 As to the Welsh Assembly Government see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

11 Cadw promotes the conservation of Wales's historic environment and gives (1) advice on the conserving and maintaining historic buildings, ancient monuments, historic landscapes and underwater archaeology; (2) grants for conserving and repairing for the historic environment; and (3) comments on applications for development or demolition that effect the historic environment: see the Welsh Assembly Government website at www.wales.gov.uk.

12 See the Cadw website at www.cadw.wales.gov.uk.

13 The Ancient Monuments Advisory Board is the successor to the Ancient Monuments Board for Wales which was established under the Ancient Monuments and Archaeological Areas Act 1979 s 22 (repealed). The Ancient Monuments Board for Wales was abolished on 1 April 2006, and all property and rights to which the board was entitled, and any liabilities to which the board was subject, were transferred to the National Assembly for Wales: see the Ancient Monuments Board for Wales (Abolition) Order 2006, SI 2006/64, art 2. The Ancient Monuments Advisory Board provides advice on the scheduling, protection, and presentation of monuments of national importance and issues affecting archaeology and the historic environment of Wales. The Welsh Assembly Government maintains a list of scheduled ancient monuments through its historic environment service Cadw: see the Welsh Assembly Government website at www.wales.gov.uk. As to scheduled ancient monuments see PARA 1010. As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

14 The Historic Buildings Advisory Council is the successor to the Historic Buildings Council for Wales established under the Historic Buildings and Ancient Monuments Act 1953 s 3 (repealed). The Council was abolished on 1 April 2006 and all property and rights to which the council was entitled, and any liabilities to which the council was subject, were transferred to the National Assembly for Wales: see the Historic Buildings Council for Wales (Abolition) Order 2006, SI 2006/63, art 2. The Historic Buildings Advisory Council is an independent advisory body which provides advice on grants and other ways of protecting historic buildings and townscapes: see the Welsh Assembly website at www.wales.gov.uk.

15 See PARA 811.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(2) HISTORIC ENVIRONMENT IN WALES/811. Royal Commission on the Ancient and Historical Monuments of Wales.

811. Royal Commission on the Ancient and Historical Monuments of Wales.

The Royal Commission on the Ancient and Historical Monuments of Wales (Comisiwn Brenhinol Henebion Cymru) was first appointed by royal warrant dated 10 August 1908¹. The current provisions are contained in the royal warrant dated 12 July 2000, which revoked the previous warrant².

The Commission is appointed to provide for the survey and recording of ancient and historical monuments and constructions³ connected with, or illustrative of, the contemporary culture, civilisation and conditions of the life of the people in Wales from the earliest times by the following:

- 11 (1) compiling, maintaining and curating the National Monuments Record of Wales as the basic national record of the archaeological and historical environment;
- 12 (2) identifying, surveying, interpreting and recording all buildings, sites and ancient monuments of archaeological, architectural and historic interest in Wales or within the territorial sea adjacent to Wales, in order both to enhance and update the National Monuments Record of Wales, and also to respond to statutory needs⁴;
- 13 (3) providing advice and information relevant to the preservation and conservation of such buildings, sites and ancient monuments of archaeological, architectural and historic interest;
- 14 (4) collecting and exchanging data with other record holders and providing an index to data from other sources;
- 15 (5) promoting the public use of information available in the National Monuments Record of Wales by all appropriate means;
- 16 (6) establishing and maintaining national standards in surveying, recording and curating of records relating to archaeology and historical architecture and providing guidance on these matters to other bodies and by exercising responsibility for the oversight of local sites and monuments records⁵.

The Commission consists of a chairman and not more than ten other persons, appointed by Her Majesty The Queen, on the advice of the Welsh Assembly Government and the Secretary of State for Wales⁶. The Commission may act notwithstanding a vacancy amongst its commissioners, and the validity of any of its proceedings is not affected by any defect in the appointment of all or any of the commissioners⁷.

Subject as provided by the royal warrant, the Commission may regulate its own procedure⁸. The Commission must publish an annual report; and has power to require persons with information likely to be needed for the National Monuments Record of Wales to provide such information as it may request, and may make inquiries about any premises by all other lawful ways and means whatsoever⁹. The Commission is funded by the Welsh Assembly Government, and must report periodically on its proceedings to the Welsh Assembly Government at such times and in such manner as might be directed¹⁰.

The Commission may appoint a secretary and other officers; and anything authorised or required to be done by the Commission may be done by any commissioner or officer who is authorised (generally or specifically) for that purpose¹¹.

1 As to royal warrants and other public documents see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 906 et seq.

2 In the royal warrant of 6 April 1992: see the royal warrant of 12 July 2000. All property, rights and liabilities of the Commission appointed under the 1992 warrant and subsequent warrants were transferred to the commission: and any agreement, transaction or other thing which had been made, effected or done by or in relation to the Commission appointed under previous warrants, has effect as if made, effected or done by the commission appointed under the 2000 warrant: see the royal warrant of 12 July 2000.

3 This includes ancient and historical monuments and constructions in, on or under, the sea bed within the United Kingdom territorial sea adjacent to Wales: see the royal warrant of 12 July 2000. As to the United Kingdom's territorial sea see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

4 As to the statutory protection and recording of ancient monuments and archaeological areas see PARA 1002 et seq.

5 See the royal warrant of 12 July 2000.

6 See the royal warrant of 12 July 2000 (amended by virtue of the Government of Wales Act 2006 s 85). Provision is made as to tenure of office and removal from office, the payment of the commissioners' expenses, and as to the declaration of financial interests in matters for consideration by the Commission: see the royal warrant of 12 July 2000. As to the Welsh Assembly Government and the Secretary of State for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

7 See the royal warrant of 12 July 2000.

8 See the royal warrant of 12 July 2000.

9 See the royal warrant of 12 July 2000.

10 See the royal warrant of 12 July 2000.

11 See the royal warrant of 12 July 2000. Every commissioner and officer is indemnified against all costs and expenses and losses for which he may become liable by reason of any act or thing done by him in the proper discharge of his office or duty: see the royal warrant of 12 July 2000.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(3) THE COMMISSION FOR ARCHITECTURE AND THE BUILT ENVIRONMENT/812. Establishment and powers.

(3) THE COMMISSION FOR ARCHITECTURE AND THE BUILT ENVIRONMENT

812. Establishment and powers.

The Commission for Architecture and the Built Environment is a body corporate¹. The functions of the Commission are the promotion of education and high standards in, and understanding and appreciation of architecture and the design, management and maintenance of the built environment². The Commission must discharge its functions in relation to England³ and may also discharge them in relation to any other place it thinks appropriate⁴.

The Commission is covered in detail elsewhere in this work⁵.

1 See the Clean Neighbourhoods and Environment Act 2005 s 87(1). The Commission replaced a company limited by guarantee known as the Commission for Architecture and the Built Environment which was dissolved: see s 91. That company in turn replaced the Royal Fine Art Commission established by royal warrant on 29 May 1924.

2 See the Clean Neighbourhoods and Environment Act 2005 s 88(1).

3 As to the meaning of 'England' see PARA 804 note 2.

4 See the Clean Neighbourhoods and Environment Act 2005 s 88(2).

5 See **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS**.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(4) THE ROYAL COMMISSION ON HISTORICAL MANUSCRIPTS/813. Establishment and terms of reference.

(4) THE ROYAL COMMISSION ON HISTORICAL MANUSCRIPTS

813. Establishment and terms of reference.

The Royal Commission on Historical Manuscripts was first appointed by royal warrant of 2 April 1869¹. By royal warrant of 1 April 2003 the responsibilities of the Commission were transferred to be exercised by a sole Historical Manuscripts Commissioner². The commissioner must:

- 17 (1) make inquiry as to the existence and location of manuscripts, including records or archives of all kinds, of value for the study of history, other than records which are for the time being public records by virtue of the Public Records Acts³;
- 18 (2) with the consent of the owners or custodians inspect and report on them;
- 19 (3) with the consent of the owners or custodians reproduce and publish or assist the publication of such reports;
- 20 (4) record particulars of such manuscripts and records in a national register thereof;
- 21 (5) promote and assist the proper preservation and storage of such manuscripts and records;
- 22 (6) assist those wishing to use such manuscripts or records for study or research;
- 23 (7) consider and advise upon general questions relating to the location, preservation and use of such manuscripts and records; and
- 24 (8) promote the co-ordinated action of all professional and other bodies concerned with the preservation and use of such manuscripts and records⁴.

The Historical Manuscripts Commission now forms part of the National Archives⁵.

Special provision is made as to the keeping and preservation of manorial documents⁶.

1 See the royal warrant of 2 April 1869 appointing commissioners to make inquiry as to the places in which various collections of manuscripts and papers of general public interest in the possession of institutions and private families, a knowledge of which would be of great utility in the illustration of history, constitutional law, science and general literature, were deposited, and for any of the other purposes therein mentioned; the royal warrants of 18 December 1897 and 27 March 1919. By royal warrant of 5 December 1959 the terms of reference of the Commission were revised and extended. As to royal warrants and other public documents see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 906 et seq.

2 The responsibilities were transferred to the current holder the office of Keeper of Public Records, and any persons who succeed her in that office, for so long as they hold it, to act as sole Historical Manuscripts Commissioner: see the royal warrant of 1 April 2003. As to the office of Keeper of Public Records see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 838.

3 As to the Public Records Acts see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 835.

4 See the royal warrant of 1 April 2003.

5 The National Archives is a non-ministerial government department and an executive agency of the Ministry of Justice bringing together the Public Record Office, the Historical Manuscripts Commission, the Office of Public Sector Information and Her Majesty's Stationery Office. As to the Ministry of Justice see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Public Record Office see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 838.

6 See the Manorial Documents Rules 1959, SI 1959/1399. 'Manorial documents' means court rolls, surveys, maps, terriers, documents and books of every description relating to the boundaries, wastes, customs or courts of a manor, but does not include the deeds or other instruments required for evidencing the title to a manor or agreements or draft agreements relating to compensation, or any documents which came into being after 31 December 1925: r 1.

The lord of the manor must cause all manorial documents in his possession or under his control to be kept and used under conditions suitable for their safe and proper preservation and must upon request furnish to the Master of the Rolls particulars of all such documents: r 2. He must inform the secretary of the Historical Manuscripts Commission whether any manorial documents in his possession or under his control are damaged or decayed, or whether he is unable to preserve them under proper conditions, in order that proposals may be made for the repair or better preservation of the documents; and the lord of the manor must, so far as he is able, give effect to any such proposals: r 3. Every change in the ownership of manorial documents must be notified by the new owner to the secretary of the Commission: r 4. The lord of the manor may deposit manorial documents for their better preservation in a repository approved by the Master of the Rolls, and documents so deposited are deemed to remain under the control of the lord of the manor: r 5. The controlling authority of the repository must furnish to the lord of the manor and to the secretary of the Commission an inventory in the prescribed form of any documents so deposited: r 6, Schedule. 'Lord of the manor' means the lord for the time being of the manor, or any person entitled to manorial documents: r 1. As to the preservation of manorial records see further PARA 933.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(5) THE NATIONAL ART COLLECTIONS FUND/814. Establishment and functions.

(5) THE NATIONAL ART COLLECTIONS FUND

814. Establishment and functions.

The National Art Collections Fund¹ was formally constituted in 1903² and was incorporated by royal charter in 1928³. The fund is a body corporate with perpetual succession and a common seal and may, in its name, plead or defend an action in all courts and has power to do all things generally incidental to or appertaining to a body corporate⁴.

The government and control of the fund is vested in the executive committee⁵ which appoints an advisory council⁶. The fund may have permanent officers with such functions, tenure and terms of office as are prescribed by the byelaws of the fund⁷.

The fund is a registered charity⁸ whose main objects are:

- 25 (1) to secure works of art of national and historic importance for presentation or loan to the public art collections of the United Kingdom⁹;
- 26 (2) to make grants in aid of opening and maintaining public or private exhibitions or works of art and objects of national and historical importance wherever held¹⁰; and
- 27 (3) to promote and obtain support for Acts of Parliament and other legislative measures which are conducive to promoting or furthering the objects and interests of the fund¹¹.

In pursuance of its objects the fund may purchase, take on lease or in exchange, hire or otherwise acquire or hold any real or personal property thought necessary or convenient for its purposes and may likewise erect, alter, improve and maintain any buildings for those purposes¹².

The fund's sources of income include commercial sponsorship, membership subscriptions, donations, legacies and investment income¹³. The fund may not carry on any trade or business or engage in any transactions with a view to the pecuniary gain or profit of its members¹⁴ but this does not preclude commercial operations for the benefit of the fund itself and the fund has a wholly owned trading subsidiary, Art Fund Services Limited, a company incorporated in England and Wales, which donates all its profits in the year to the fund¹⁵.

Gifts to the fund are specifically exempted from inheritance tax¹⁶; and the fund enjoys other tax advantages and privileges¹⁷.

1 In May 2006 the National Art Collections Fund adopted the name 'The Art Fund' as its public and trading name but its full name has been retained for legal purposes. The National Art Collections Fund ('The Art Fund') is registered as a charity with the Charity Commission for England and Wales under number 209174: see the National Art Collections Fund Report of the Board and Consolidated Financial Statements year ended 31 December 2008. As to the registration of charities see **CHARITIES** vol 8 (2010) PARA 304 et seq.

2 See National Art-Collections Fund *Twenty-five Years of the National Art-Collections Fund 1903-1928* (1928) University Press, Glasgow, p 2.

3 See the Charter of Incorporation of the National Art-Collections Fund, 19 December 1928. The charter was amended by resolutions passed in 1976 and 1978. As to incorporation by royal charter see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1128.

- 4 See the Charter of Incorporation of the National Art-Collections Fund, 19 December 1928, art 1.
- 5 See Charter of Incorporation of the National Art-Collections Fund, 19 December 1928, art 11, Schedule paras 33-38.
- 6 See Charter of Incorporation of the National Art-Collections Fund, 19 December 1928, art 11, Schedule para 10.
- 7 See Charter of Incorporation of the National Art-Collections Fund, 19 December 1928, art 9. The byelaws are set out in the Schedule to the charter of incorporation and may be altered or revoked by the executive committee with the approval of a general meeting of the fund, provided that such alterations or revocations have been allowed by the Privy Council: see art 14. As to the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 521-526.
- 8 See note 1.
- 9 See the Charter of Incorporation of the National Art-Collections Fund, 19 December 1928, art 4(a).
- 10 Charter of Incorporation of the National Art-Collections Fund, 19 December 1928, art 4(c).
- 11 Charter of Incorporation of the National Art-Collections Fund, 19 December 1928, art 4(g).
- 12 Charter of Incorporation of the National Art-Collections Fund, 19 December 1928, art 4(f).
- 13 See National Art Collections Fund Report of the Board and Consolidated Financial Statements year ended 31 December 2008, treasurer's report.
- 14 See the Charter of Incorporation of the National Art-Collections Fund, 19 December 1928, art 5.
- 15 See National Art Collections Fund Report of the Board and Consolidated Financial Statements year ended 31 December 2008.
- 16 See the Inheritance Tax Act 1984 s 25, Sch 3; and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 523.
- 17 See generally PARAS 978, 1107-1109.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(6) THE NATIONAL HERITAGE MEMORIAL FUND/815. Establishment and constitution.

(6) THE NATIONAL HERITAGE MEMORIAL FUND

815. Establishment and constitution.

The National Heritage Memorial Fund was established in succession to the National Land Fund as a memorial to those who have died for the United Kingdom¹. It is vested in and administered by a body corporate known as the trustees of the National Heritage Memorial Fund² consisting of a chairman³ and not more than 14 other members appointed by the Prime Minister⁴. They must include persons with knowledge, experience or interests relevant to the purposes for which the fund may be applied⁵ and who are connected by residence or otherwise with England, Wales, Scotland and Northern Ireland respectively⁶.

The trustees may appoint such officers and servants as they think fit⁷. The trustees discharge their functions in accordance with their own arrangements⁸. The validity of any proceedings of the trustees is not affected by any vacancy among them or by any defect in the appointment of a trustee⁹.

Her Majesty may by Order in Council¹⁰ provide for the transfer to the trustees of certain functions¹¹ exercisable by the Secretary of State¹².

1 National Heritage Act 1980 s 1(1). As to the abolition of the National Land Fund see s 15 (repealed). As to the meaning of 'United Kingdom' see PARA 804 note 2.

2 The trustees are not to be regarded as acting on behalf of the Crown and neither they nor their officers or servants are to be regarded as Crown servants: National Heritage Act 1980 s 1(4), Sch 1 para 1. References to the trustees in Pt I (ss 1-7) are to the body constituted by s 1(2): s 1(4). As to the legal status of bodies not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

3 The Prime Minister must consult the Scottish Ministers before appointing the chairman of the Trustees: National Heritage Act 1980 s 1(3A)(a) (s 1(3A) added by SI 2000/1102). As to the tenure of office of the chairman see the National Heritage Act 1980 Sch 1 para 4. As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

4 National Heritage Act 1980 s 1(2) (amended by the National Lotteries etc Act 1993 s 36, Sch 4 para 1). As to the tenure of office of trustees see the National Heritage Act 1980 Sch 1 para 3 (amended by SI 2000/1102). As to the remuneration of trustees see the National Heritage Act 1980 Sch 1 para 4A (added by the National Heritage Act 1997 s 2(a)). As to the payment of expenses and allowances see the National Heritage Act 1980 Sch 1 para 5 (amended by the National Lottery etc Act 1993 s 36, Sch 4 para 7; National Heritage Act 1997 s 2(b)). As to the Prime Minister see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 394-398.

5 As to the purposes of the fund see PARA 816.

6 National Heritage Act 1980 s 1(3). The Prime Minister must consult the Scottish Ministers before appointing any person on the ground that he is connected by residence or otherwise with Scotland: s 1(3A)(b) (as added: see note 3). As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4.

7 See the National Heritage Act 1980 Sch 1 para 6 (amended by the National Heritage Act 1997, s 2(c)).

8 See the National Heritage Act 1980 Sch 1 para 7(1)(a), (4) (amended by SI 1992/1311). Those arrangements may provide for any function to be discharged under the general direction of the trustees by a committee or committees consisting of three or more trustees: Sch 1 para 7(1)(b). Anything done by a committee has effect as if done by the trustees if the arrangements so provide: Sch 1 para 7(2).

9 National Heritage Act 1980 Sch 1 para 7(3).

10 As to Orders in Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 907.

11 See functions under any provisions of the National Heritage Act 1980 Pt II (ss 8-15) or under the Inheritance Tax Act 1984 s 230 (see PARA 1107): National Heritage Act 1980 s 14(1) (amended by the Inheritance Tax Act 1984 s 276, Sch 8 para 16). Such an order may contain incidental, consequential and supplemental provisions in order to give it effect (National Heritage Act 1980 s 14(2)), and may not be made unless a draft order has been laid before and approved by resolution of each House of Parliament (s 14(3)). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

12 National Heritage Act 1980 s 14(1) (amended by SI 1992/1311). As to the Secretary of State see PARA 802 note 2.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(6) THE NATIONAL HERITAGE MEMORIAL FUND/816. Financial assistance from the National Heritage Memorial Fund and other expenditure out of the fund.

816. Financial assistance from the National Heritage Memorial Fund and other expenditure out of the fund.

The powers of the trustees of the National Heritage Memorial Fund¹ to give financial assistance² are exercisable in the case of things of any kind which are of scenic, historic, archaeological, aesthetic, architectural, engineering, artistic or scientific interest, including animals and plants which are of zoological or botanical interest³. The trustees may, for the purpose of:

- 28 (1) securing the preservation or enhancement of such things⁴;
- 29 (2) encouraging the study and understanding of them and the compilation and dissemination of information about them⁵;
- 30 (3) securing or improving access to them, or their display⁶;
- 31 (4) encouraging enjoyment of them⁷; or
- 32 (5) encouraging the maintenance and development of the skills required for their preservation or enhancement⁸,

or for any purpose ancillary to those purposes, give financial assistance for any project which appears to them to be of public benefit⁹. The projects for which financial assistance may be so given for any of the above purposes include (among others) projects for any person¹⁰ to whom the assistance is to be given to acquire property of any kind (including land¹¹); to construct or convert buildings¹²; to carry out other works¹³; or to provide education or training¹⁴. Before giving any financial assistance for any project, the trustees must obtain any expert advice about the project they consider appropriate¹⁵, and must be satisfied that the project is of importance to the national heritage¹⁶.

The trustees may also give financial assistance¹⁷ for any projects for any person to whom the assistance is to be given to set up and maintain a public exhibition¹⁸, to compile and maintain an archive¹⁹, to publish archive material²⁰, or to compile and publish a comprehensive work of reference (or publish a comprehensive work of reference that has previously been compiled)²¹, or to do any ancillary thing²², which appears to them to relate to an important aspect of the history, natural history or landscape of the United Kingdom²³ and to be of public benefit²⁴.

The trustees may apply the fund for any purpose, other than making grants and loans, which is a purpose connected with the acquisition, maintenance or preservation of property falling within heads (a) to (e) below, including its acquisition, maintenance or preservation by the trustees²⁵. The property referred to is:

- 33 (a) any land, building or structure which in the opinion of the trustees is of outstanding scenic, historic, archaeological, aesthetic, architectural, engineering or scientific interest²⁶;
- 34 (b) any object which in their opinion is of outstanding historic, artistic or scientific interest²⁷;
- 35 (c) any collection or group of objects, being a collection or group which taken as a whole is in their opinion of outstanding historic, artistic or scientific interest²⁸;
- 36 (d) any land or object not falling within head (a), (b) or (c) above the acquisition, maintenance or preservation of which is in their opinion desirable by reason of its connection with land or a building or structure falling within head (a) above²⁹; or

- 37 (e) any rights in or over land the acquisition of which is in their opinion desirable for the benefit of land or a building or structure falling within head (a) or (d) above³⁰.

The trustees must not, however, apply the fund for any such purpose in respect of any property unless they are of the opinion, after obtaining any expert advice they consider appropriate, that the property³¹ is of importance to the national heritage³². Notwithstanding that an object such as is mentioned in head (b) above or a collection or group of objects such as is mentioned in head (c) above is not of itself of importance to the national heritage, the trustees may apply the fund for any purpose connected with its acquisition if they are satisfied that after the acquisition it will form part of a collection or group of objects such as is mentioned in head (c) above³³, and, after obtaining any expert advice they consider appropriate, they are of the opinion that that collection or group is of importance to the national heritage³⁴. The trustees must not, however, retain any property acquired by them under these provisions³⁵ except in such cases and for such period as the Secretary of State³⁶ may allow³⁷.

1 As to the National Heritage Memorial Fund and the trustees see PARA 815.

2 Re the powers under the National Heritage Act 1980 s 3: see the text to notes 3-16.

3 National Heritage Act 1980 s 3(1) (s 3 substituted by the National Heritage Act 1997 s 1(1)). Financial assistance under this provision must given by way of grant or loan out of the fund, and in giving such assistance the trustees may impose any conditions they think fit: s 3(5) (as so substituted). The conditions that may be imposed in giving such assistance may relate (among other things) to: (1) maintenance, repair, insurance and safekeeping (s 3(6)(a) (as so substituted)); (2) means of access or display (s 3(6)(b) (as so substituted)); (3) disposal or lending (s 3(6)(c) (as so substituted)); or (4) repayment of grant or loan (s 3(6)(d) (as so substituted)). References in the National Heritage Act 1980 to the making of a grant or loan or the transfer or conveyance of any property to any institution or body include references to the making of a grant or loan or the transfer or conveyance of property to trustees for that institution or body: s 18(4).

4 National Heritage Act 1980 s 3(2)(a) (as substituted: see note 3). In giving any financial assistance for any project for the preservation or enhancement of anything, or determining the conditions on which such assistance is to be given, the trustees must bear in mind the desirability of public access to, or the public display of, the thing in question and of its enjoyment by the public: s 3(7) (as so substituted).

5 National Heritage Act 1980 s 3(2)(b) (as substituted: see note 3).

6 National Heritage Act 1980 s 3(2)(c) (as substituted: see note 3).

7 National Heritage Act 1980 s 3(2)(d) (as substituted: see note 3).

8 National Heritage Act 1980 s 3(2)(e) (as substituted: see note 3).

9 National Heritage Act 1980 s 3(2) (as substituted: see note 3).

10 As to the meaning of 'person' see PARA 803 note 16.

11 National Heritage Act 1980 s 3(3)(a) (as substituted: see note 3). As to the meaning of 'land' see PARA 804 note 30.

12 National Heritage Act 1980 s 3(3)(b) (as substituted: see note 3).

13 National Heritage Act 1980 s 3(3)(c) (as substituted: see note 3).

14 National Heritage Act 1980 s 3(3)(d) (as substituted: see note 3).

15 National Heritage Act 1980 s 3(4)(a) (as substituted: see note 3).

16 National Heritage Act 1980 s 3(4)(b) (as substituted: see note 3).

17 Before giving any financial assistance under the National Heritage Act 1980 s 3A for any project, the trustees must obtain any expert advice about the project they consider appropriate: s 3A(4) (s 3A added by the

National Heritage Act 1997 s 1(2)). Section 3(5), (6) (see note 3) applies for the purposes of s 3A as it applies for the purposes of s 3: see s 3A(5) (as so added).

18 National Heritage Act 1980 s 3A(2)(a) (as added: see note 17).

19 National Heritage Act 1980 s 3A(2)(b) (as added: see note 17). In giving any financial assistance for any project to compile or maintain an archive, or determining the conditions on which such assistance is to be given, the Trustees must bear in mind the desirability of public access to the archive: s 3A(6) (as so added). For these purposes, 'archive' includes any collection of sound recordings, images or other information, however stored: s 3A(3) (as so added).

20 National Heritage Act 1980 s 3A(2)(c) (as added: see note 17).

21 National Heritage Act 1980 s 3A(2)(d) (as added: see note 17).

22 National Heritage Act 1980 s 3A(2) (as added: see note 17).

23 National Heritage Act 1980 s 3A(1)(a) (as added: see note 17). As to the meaning of 'United Kingdom' see PARA 804 note 2.

24 National Heritage Act 1980 s 3A(1)(b) (as added: see note 17).

25 National Heritage Act 1980 s 4(1) (amended by the National Heritage Act 1997 s 3, Schedule para 1(1), (2)). The National Heritage Act 1980 s 3(7) (see note 4) has effect in relation to the application of any sums out of the fund under s 4 as it has in relation to the making of a grant or loan under s 3: see s 4(2C) (s 4(2) substituted, (2A)-(2C) added, by the National Heritage Act 1997 Schedule para 1(1), (3)).

26 National Heritage Act 1980 s 4(2)(a) (as substituted: see note 25).

27 National Heritage Act 1980 s 4(2)(b) (as substituted: see note 25).

28 National Heritage Act 1980 s 4(2)(c) (as substituted: see note 25).

29 National Heritage Act 1980 s 4(2)(d) (as substituted: see note 25).

30 National Heritage Act 1980 s 4(2)(e) (as substituted: see note 25).

31 Ie or, in the case of land or an object falling within the National Heritage Act 1980 s 4(2)(d) (see head (d) in the text) the land, building or structure with which it is connected, or in the case of rights falling within s 4(2)(e) (see head (e) in the text) the land, building or structure for whose benefit they are acquired: National Heritage Act 1980 s 4(2A) (as added: see note 25).

32 National Heritage Act 1980 s 4(2A) (as added: see note 25).

33 National Heritage Act 1980 s 4(2B)(a) (as added: see note 25).

34 National Heritage Act 1980 s 4(2B)(b) (as added: see note 25).

35 Ie under the National Heritage Act 1980 s 4: see the text to notes 25-34.

36 As to the Secretary of State see PARA 802 note 2.

37 National Heritage Act 1980 s 4(3) (amended by SI 1992/1311).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(6) THE NATIONAL HERITAGE MEMORIAL FUND/817. Property, finance and information.

817. Property, finance and information.

The Secretary of State¹ must pay into the National Heritage Memorial Fund² in the first month of each financial year³ a sum determined by him before the beginning of the year; and he may at any time pay into the fund such further sums as he may from time to time determine⁴. There must also be paid into the fund any other sums received by the trustees in consequence of the discharge of their functions⁵ or which they receive under the National Lottery⁶.

The trustees of the fund may accept gifts⁷ of money or other property⁸ if it is either unconditional or on conditions which enable it, and any income or proceeds of sale arising from it, to be applied for a purpose for which the fund may⁹ be applied¹⁰. The trustees must not retain any property, other than money, accepted by way of gift except in such cases and for such period as the Secretary of State may allow¹¹.

Any sums in the fund not immediately required for any other purpose may be invested by the trustees subject to the following conditions¹². Sums directly or indirectly representing money paid into the fund¹³ may be invested in any manner approved by the Treasury¹⁴. The trustees must not invest any amount available for investment which represents such money except with the consent of the Treasury¹⁵; and must, if required by the Treasury, invest any such amount specified by the Treasury in such manner as it directs¹⁶.

As soon as practicable after the end of each financial year the trustees must make a report on their activities for that year to the Secretary of State who must publish the report and lay copies of it before Parliament¹⁷.

The trustees must keep proper accounts and proper records in relation to them¹⁸. In respect of each financial year, they must prepare a statement of account in such form as the Secretary of State may direct with Treasury approval¹⁹, and they must send copies of the statement to the Secretary of State and the Comptroller and Auditor General²⁰ before the end of the following November²¹. The Comptroller and Auditor General must examine, certify and report on each statement and lay copies of it and of his report before Parliament²².

1 As to the Secretary of State see PARA 802 note 2.

2 As to the National Heritage Memorial Fund see PARA 815.

3 'Financial year' means the 12 months ending with 31 March: National Heritage Act 1980 s 18(2).

4 National Heritage Act 1980 s 2(1) (amended by SI 1981/207; SI 1992/1311).

5 National Heritage Act 1980 s 2(2). As to the trustees see PARA 815; and as to their functions see PARAS 815-816.

6 The trustees must pay into the fund any sums paid to them under the National Lottery etc Act 1993 s 24 (see **LICENSING AND GAMBLING** vol 68 (2008) PARA 721); National Heritage Act 1980 s 2(1A) (added by the National Lottery etc Act 1993 s 36, Sch 4 para 2). The trustees are a distributing body for the purposes of the National Lottery Distribution Fund: see the National Lottery etc Act 1993 s 23(3); and **LICENSING AND GAMBLING** vol 68 (2008) PARA 721.

7 'Gifts' includes bequests and devises: National Heritage Act 1980 s 5(4).

8 National Heritage Act 1980 s 5(1). As to property accepted in satisfaction of tax see PARA 1107. As to relief from rates see s 1(4), Sch 1 para 2 (amended by SI 1990/776; the Rating (Empty Properties) Act 2007 s 2(1), Sch 1 para 7).

9 le under the National Heritage Act 1980 Pt I (ss 1-7): see PARA 816.

10 National Heritage Act 1980 s 5(2). The conditions must also enable the trustees to comply with s 5(3) (see the text to note 11) and s 2(2) (see the text to note 5): s 5(2).

11 National Heritage Act 1980 s 5(3) (amended by SI 1992/1311).

12 See the National Heritage Act 1980 s 6(1).

13 le under the National Heritage Act 1980 s 2(1) or s 2(1A) (see the text to notes 4, 6): s 6(2) (amended by the National Lottery etc Act 1993 Sch 4 para 5).

14 National Heritage Act 1980 s 6(2). As to the meaning of 'Treasury' see PARA 809 note 4. The trustees may invest any sums to which s 6(2) does not apply in any investments in which trustees may invest under the general power of investment in the Trustee Act 2000 s 3 (as restricted by ss 4 and 5 of that Act) (see **TRUSTS** vol 48 (2007 Reissue) PARA 1012 et seq): National Heritage Act 1980 s 6(3) (substituted by the Trustee Act 2000 s 40(1), Sch 2 Pt II para 39).

15 National Heritage Act 1980 s 6(2)(a).

16 National Heritage Act 1980 s 6(2)(b).

17 National Heritage Act 1980 s 7(1) (amended by SI 1992/1311). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

18 National Heritage Act 1980 s 7(2)(a).

19 National Heritage Act 1980 s 7(2)(b) (amended by SI 1992/1311).

20 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

21 National Heritage Act 1980 s 7(2)(c) (amended by SI 1992/1311).

22 National Heritage Act 1980 s 7(3).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(7) THE MUSEUMS, LIBRARIES AND ARCHIVES COUNCIL/818. Establishment and functions.

(7) THE MUSEUMS, LIBRARIES AND ARCHIVES COUNCIL

818. Establishment and functions.

The Museums, Libraries and Archives Council (the 'MLA')¹ is a company limited by guarantee and not having a share capital², and a registered charity³. The objects of the MLA are to advance the education of the public and to further any other purpose which may be charitable according to the law of England and Wales⁴ which relates to the establishment, maintenance and operation of museums, libraries and archives (which are either public or from which the public may benefit) and related services, in particular by promoting, fostering and advising upon:

- 38 (1) the establishment and development of museums, libraries and archives, their activities, mutual co-operation and good management;
- 39 (2) all information services (whether reference, study, bibliographical or other) relating to the humanities or to scientific, technological, business or other matters, and the provision of those services in museums, libraries and archives;
- 40 (3) the acquisition, conservation, preservation and protection of all relevant material, including heritage items and, in particular, historical and other archives; the study, reproduction and distribution (in full or abstract) of such material;
- 41 (4) projects relating to museums, libraries and archives which assist urban and rural regeneration in areas of social and economic deprivation, or advance industry and commerce for the benefit of the community; and
- 42 (5) public interest in, support of and access to museums, libraries and archives and their purposes generally⁵.

The aim of the MLA is, by leading strategically, to promote best practice in museums, libraries and archives, to inspire innovative, integrated and sustainable services for all⁶. The MLA is governed by a board of trustees⁷.

1 The Museums, Libraries and Archives Council has adopted the acronym 'MLA': see the MLA website at www.mla.gov.uk.

2 The company no 03888251. As to companies limited by guarantee see **COMPANIES** vol 14 (2009) PARAS 79, 102.

3 The registered charity no 1079666. The council is a non-departmental public body sponsored by the Department for Culture, Media and Sport which replaced the Museums and Galleries Commission and the Library and Information Commission: see the MLA website at www.mla.gov.uk. As to non-departmental public bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq. As to the registration of charities see **CHARITIES** vol 8 (2010) PARA 304 et seq.

4 As to charitable purposes see **CHARITIES** vol 8 (2010) PARA 1 et seq.

5 See the Memorandum of Association of the Museums, Libraries and Archives Council para 3 (amended by special resolution dated 25 February 2000).

6 See the MLA website at www.mla.gov.uk.

7 See the MLA website at www.mla.gov.uk.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(7) THE MUSEUMS, LIBRARIES AND ARCHIVES COUNCIL/819. Accreditation Scheme: acquisitions and disposals.

819. Accreditation Scheme: acquisitions and disposals.

The MLA's¹ Museum Accreditation Scheme sets out nationally agreed standards for museums and art galleries with permanent collections in the United Kingdom². To qualify, museums and galleries must meet clear basic requirements on how they care for and document their collections, how they are governed and managed, and on the information and services they offer to their users³. In order to reach the appropriate standard in compliance with the scheme, museums and galleries must, among other requirements, have in place adequate arrangements for the management of their collections⁴. These arrangements must include an Acquisition and Disposal Policy approved by their governing body or under delegated powers⁵. The scheme sets out an outline for such a policy which takes into account relevant parts of the Museums Association Code of Ethics (2002), in particular the sections of the code which place on museums and galleries an obligation to acquire items honestly and responsibly, to safeguard the long term public interest in their collections, and to recognise the interests of people who made, used, owned, collected or gave items in the collections⁶.

1 As to the MLA see PARA 818.

2 See the MLA website at www.mla.gov.uk. As to the meaning of 'United Kingdom' see PARA 804 note 2.

3 See the MLA website at www.mla.gov.uk.

4 See The Accreditation Scheme for Museums in the United Kingdom: Accreditation Standard section 4.

5 See The Accreditation Scheme for Museums in the United Kingdom: Accreditation Standard section 4.1.1.

6 See The Accreditation Scheme for Museums in the United Kingdom: Accreditation Standard section 4.1.2, Sch 6.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(i) Transfers and Loans/820. Transfer of objects or related documents between institutions.

(8) MUSEUMS AND GALLERIES

(i) Transfers and Loans

820. Transfer of objects or related documents between institutions.

Any specified body¹ may, by way of sale, gift or exchange, transfer an object² the property in which is vested in it and which is comprised in its collection, if the transfer is to any other specified body³. Where the property in an object has become vested in a body subject to a trust or condition, the power so conferred is exercisable in a manner inconsistent with the trust or condition if the person⁴ who first imposed the trust or condition has, or his personal representatives⁵ have, consented to the exercise of the power in that manner⁶.

Where a body in whom an object has become vested subject to a trust or condition transfers the object to another body under these provisions, the object must be held by that other body subject to the same trust or condition⁷.

The powers so conferred on a body are in addition to any other powers of transfer which that body may have⁸.

1 The specified bodies are: the Board of Trustees of the Armouries; the British Library Board; the trustees of the British Museum; the trustees of the Imperial War Museum; the Board of Governors of the Museum of London; the Board of Trustees of the National Gallery; the Board of Trustees of the National Galleries of Scotland; the Board of Trustees of the National Library of Scotland; the trustees of the National Maritime Museum; the Board of Trustees of the National Museums and Galleries on Merseyside; the Board of Trustees of the National Museums of Scotland; the Board of Trustees of the National Portrait Gallery; the trustees of the Natural History Museum; the Board of Trustees of the Science Museum; the Board of Trustees of the Tate Gallery; the Board of Trustees of the Victoria and Albert Museum; the Historic Buildings and Monuments Commission for England: Museums and Galleries Act 1992 Sch 5 Pt I (amended by SI 2000/2955). The Secretary of State may by order amend Sch 5 by adding any body in the United Kingdom to those for the time being specified therein: Museums and Galleries Act 1992 s 6(6) (amended by SI 1992/1311). The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Museums and Galleries Act 1992 s 6(7). The functions of the Secretary of State under s 6(6) are transferred to the Welsh Ministers so far as they relate to the Court of Governors of the National Library of Wales and the Council of the National Museum of Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 Sch 11 para 30. The power of the Secretary of State to make an order under the Museums and Galleries Act 1992 s 6(6) may, for the purpose of the application of s 6 to transfers of objects by bodies in Scotland, be exercised separately: s 6(8) (added by SI 1999/1756). As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'United Kingdom' see PARA 804 note 2. As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516. As to the Armouries see PARA 876. As to the British Library and the National Library of Wales see PARA 906. As to the British Museum and the Natural History Museum see PARA 825 et seq. As to the Imperial War Museum see PARA 844. As to the Museum of London see PARA 857. As to the National Gallery, the National Portrait Gallery and the Tate Gallery see PARA 835 et seq. As to the National Maritime Museum see PARA 850. As to the Science Museum see PARA 870. As to the Victoria and Albert Museum see PARA 864. As to the Historic Buildings and Monuments Commission for England see PARA 803 et seq. As to the National Museum of Wales see PARA 892.

2 These provisions apply in relation to a document as they apply in relation to an object other than a document: Museums and Galleries Act 1992 s 6(2).

3 Museums and Galleries Act 1992 s 6(1).

4 As to the meaning of 'person' see PARA 803 note 16.

- 5 As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.
- 6 Museums and Galleries Act 1992 s 6(3).
- 7 Museums and Galleries Act 1992 s 6(4).
- 8 Museums and Galleries Act 1992 s 6(5).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(i) Transfers and Loans/821. Gifts to the nation.

821. Gifts to the nation.

In any case where a work of art is given for the benefit of the public or the nation¹, and the donor has made no provision as to the person² responsible for its care³, it will vest in such specified bodies⁴ as the Secretary of State may direct⁵. If, however, the body in whom a gift by will would otherwise so vest determines that the work of art is not fit to be part of its collection, the work of art, unless otherwise disposed of by the testator, becomes part of his residuary estate⁶.

1 Museums and Galleries Act 1992 s 7(1)(a).

2 As to the meaning of 'person' see PARA 803 note 16.

3 Museums and Galleries Act 1992 s 7(1)(b).

4 The bodies concerned are those specified in the Museums and Galleries Act 1992 Sch 5: see s 7(1). As to the bodies specified in Sch 5 Pt I see PARA 820 note 1. For these purposes only, the following additional bodies are specified: the Court of Governors of the National Library of Wales; the Council of the National Museum of Wales; the trustees of the Ulster Museum; the trustees of the Ulster Folk and Transport Museum; the Board of Trustees of the National Museums and Galleries of Northern Ireland; Historic Royal Palaces; and the National Trust for Places of Historic Interest or Natural Beauty: Sch 5 Pt II (amended by SI 1998/613; SI 2000/2955). As to the National Trust see PARA 979. As to the power of the Secretary of State by order to amend the Museums and Galleries Act 1992 Sch 5 see s 6(6)-(8); and PARA 820 note 1. As to the Secretary of State see PARA 802 note 2.

5 Museums and Galleries Act 1992 s 7(1) (amended by SI 1992/1311). Such gifts are exempt from inheritance tax: see the Inheritance Tax Act 1984 s 25, Sch 3; and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 523.

6 Museums and Galleries Act 1992 s 7(2).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(i) Transfers and Loans/822. Transfers of land.

822. Transfers of land.

Where any land¹ occupied wholly or partly for the purposes of any specified institution² is vested in the Secretary of State³, he may, notwithstanding any prohibition or restriction to the contrary, transfer the land to the body specified⁴ in relation to that institution⁵. Stamp duty will not be chargeable on any instrument certified to the Commissioners for Her Majesty's Revenue and Customs⁶ by the Secretary of State as having been made or executed for the purpose of giving effect to a transfer by him of land occupied wholly or partly for the purposes of any such specified institution to the body specified in relation to that institution⁷.

1 As to the meaning of 'land' see PARA 804 note 30.

2 Ie an institution specified in the Museums and Galleries Act 1992 Sch 6 col 1: see s 8(1); and note 4.

3 As to the Secretary of State see PARA 802 note 2.

4 Ie a body specified in the Museums and Galleries Act 1992 Sch 6 col 2: s 8(1). The specified institutions and the bodies specified in relation to them are: (1) the British Library and the British Library Board; (2) the British Museum and the trustees of the British Museum; (3) the Imperial War Museum and the trustees of the Imperial War Museum; (4) the National Gallery and the Board of Trustees of the National Gallery; (5) the National Galleries of Scotland and the Board of Trustees of the National Galleries of Scotland; (6) the National Library of Scotland and the Board of Trustees of the National Library of Scotland; (7) the National Maritime Museum and the trustees of the National Maritime Museum; (8) the National Museums of Scotland and the Board of Trustees of the National Museums of Scotland; (9) the National Portrait Gallery and the Board of Trustees of the National Portrait Gallery; (10) the Natural History Museum and the trustees of the Natural History Museum; (11) the Science Museum and the Board of Trustees of the Science Museum; (12) the Tate Gallery and the Board of Trustees of the Tate Gallery; (13) the Victoria and Albert Museum and the Board of Trustees of the Victoria and Albert Museum; and (14) the Wallace Collection and the Board of Trustees of the Wallace Collection: Sch 6. As to the British Library see PARA 906. As to the British Museum and the Natural History Museum see PARA 825 et seq. As to the Imperial War Museum see PARA 844. As to the National Gallery, the National Portrait Gallery, the Tate Gallery and the Wallace Collection see PARA 835 et seq. As to the National Maritime Museum see PARA 850. As to the Science Museum see PARA 870. As to the Victoria and Albert Museum see PARA 864.

5 Museums and Galleries Act 1992 s 8(1).

6 As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

7 Museums and Galleries Act 1992 s 8(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). An instrument such as is mentioned in the Museums and Galleries Act 1992 s 8(2) is not duly stamped unless (1) it has, in accordance with the provisions of the Stamp Act 1891 s 12, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped (Museums and Galleries Act 1992 s 8(3)(a)); or (2) it has been stamped with the duty to which it would otherwise be liable (see s 8(3)(b)). See further **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1111.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(ii) Human Remains in Museums/823. Care of human remains.

(ii) Human Remains in Museums

823. Care of human remains.

The specified bodies¹ may transfer from their collection any human remains which they reasonably believe to be remains of a person who died less than 1000 years before 3 October 2005² if it appears to them to be appropriate to do so for any reason, whether or not relating to their other functions³. If, in relation to any human remains in their collection, it appears to such a body that the human remains are mixed or bound up with something other than human remains⁴, and that it is undesirable, or impracticable, to separate them⁵, this power includes power to transfer the thing with which the human remains are mixed or bound up⁶.

The government has issued non-statutory guidance for the care of human remains in museums which is intended to provide guidance, and to set out best practice, on the care of human remains for all museums and not just the specified bodies⁷.

1 The specified bodies are: the Board of Trustees of the Armouries; the Trustees of the British Museum; the Trustees of the Imperial War Museum; the Board of Governors of the Museum of London; the Trustees of the National Maritime Museum; the Board of Trustees of the National Museums and Galleries on Merseyside; the Trustees of the Natural History Museum; the Board of Trustees of the Science Museum; and the Board of Trustees of the Victoria and Albert Museum: Human Tissue Act 2004 s 47(1). As to the Armouries see PARA 876. As to the British Museum and the Natural History Museum see PARA 825 et seq. As to the Imperial War Museum see PARA 844. As to the Museum of London see PARA 857. As to the National Maritime Museum see PARA 850. As to the Science Museum see PARA 870. As to the Victoria and Albert Museum see PARA 864.

2 Ie the day on which the Human Tissue Act 2004 s 47 came into force: see ss 47(2), 60(2); Human Tissue Act 2004 (Commencement No 2) Order 2005, SI 2005/2632, art 2.

3 Human Tissue Act 2004 s 47(2). The power conferred by s 47(2) does not affect any trust or condition subject to which a specified body holds anything in relation to which the power is exercisable: s 47(4). The power is an additional power: s 47(5).

4 Human Tissue Act 2004 s 47(3)(a).

5 Human Tissue Act 2004 s 47(3)(b).

6 Human Tissue Act 2004 s 47(3).

7 See Guidance for the Care of Human Remains in Museums: Department for Culture, Media and Sport, 2003. A copy of the guidance is available on the DCMS website at www.culture.gov.uk.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(ii) Human Remains in Museums/824. Display of human remains.

824. Display of human remains.

No person¹ may use, for the purpose of public display, the body of a deceased person or relevant material which has come from the body of a deceased person, otherwise than under the authority of a licence granted by the Human Tissue Authority for the purpose².

1 As to the meaning of 'person' see PARA 803 note 16.

2 See the Human Tissue Act s 16(1), (2)(f). This does not apply to the body of a person who died before 1 September 2006 or to material which has come from the body of such a person, and at least 100 years have elapsed since the date of the person's death: see s 6(4). See further MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 255 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/A. THE BRITISH MUSEUM AND THE NATURAL HISTORY MUSEUM/825. The legislation.

(iii) Particular Institutions

A. THE BRITISH MUSEUM AND THE NATURAL HISTORY MUSEUM

825. The legislation.

The British Museum Act 1963 repealed and replaced almost all the legislation relating to the British Museum¹. It also provides for the separation of the Natural History Museum from the British Museum².

1 See the British Museum Act 1963 s 13(5), Sch 4 (repealed). The British Museum was established in 1753. The British Museum Act 1753 (repealed) incorporated the trustees of the British Museum, vested the management of the museum in them, and authorised the purchase of the museum or collection of Sir Hans Sloane for £20,000 and the Harleian collection of manuscripts for £10,000. It further provided for the erection of a general repository for the reception of the collections mentioned above and all additions, and of the Cottonian Library, for preservation for public use. The necessary money was raised by lottery: see ss 22-49 (repealed). The Cottonian Library, consisting of manuscripts and other writings, was acquired by the nation, with a number of coins, medals and other rarities, from Sir Robert Cotton in 1700: see 12 & 13 Will 3 c 7 (British Museum) (1700) (repealed); and 6 Anne c 30 (British Museum) (1706) (repealed). Other special collections forming part of the British Museum include the Townley collection (see the British Museum Act 1805 (repealed)); the Elgin Marbles (see the British Museum Act 1816 (repealed)); the Payne Knight collection of coins etc (see the British Museum (No 2) Act 1824 (repealed)); the Rothschild Zoological Collection (see the British Museum Act 1938 (repealed)); and books, manuscripts etc presented by George II, George III and George IV. In 1755 Old Montagu House, Great Russell Street, Bloomsbury, subsequently known as the British Museum, was vested in the museum trustees for the purposes of a general repository by 28 Geo 2 c iii (Vesting of Montagu House in trustees of British Museum) (1755) (repealed); and see the British Museum Act 1753 ss 9, 21 (repealed). The acquisition of other land for the enlargement of the museum was authorised by the British Museum Act 1824 (repealed); the British Museum Act 1838 (repealed); and the British Museum (Purchase of Land) Act 1894 (largely repealed).

2 See the British Museum Act 1963 s 8; and PARA 826. As to the transfer of the British Museum Library see the British Library Act 1972 s 3; and PARA 907.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/A. THE BRITISH MUSEUM AND THE NATURAL HISTORY MUSEUM/826. Separation of Natural History Museum.

826. Separation of Natural History Museum.

On 30 September 1963¹ the functions of the trustees of the British Museum² with respect to the Natural History Museum were transferred to the trustees of the Natural History Museum (known as the 'Natural History trustees') who now have the general management and control of that museum³. The Natural History trustees are a body corporate, with perpetual succession and a common seal⁴.

On 30 September 1963 the following property vested in the Natural History trustees⁵: (1) the objects vested immediately before that date in the trustees of the British Museum and comprised in the collections of the Natural History Museum⁶; and (2) the land and buildings at Tring referred to in the British Museum Act 1938⁷. Such of those objects as became vested in the trustees of the British Museum by virtue of a gift or bequest must be treated for the purposes of the British Museum Act 1963 as vested in the Natural History trustees by virtue of a similar gift or bequest⁸.

1 Ie the date of commencement of the British Museum Act 1963: see ss 8(1), 13(2); and the British Museum Act 1963 (Commencement) Order 1963, SI 1963/1546.

2 As to the trustees of the British Museum see PARA 827.

3 See the British Museum Act 1963 s 8(1) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 1(1), (2), (3)(a)). The Natural History Museum consists of the collections of the British Museum departments of zoology, geology and palaeontology, mineralogy and botany which were moved to South Kensington (see the British Museum Act 1878 (repealed)) and the collection at Tring bequeathed by the second Lord Rothschild (see the British Museum Act 1938 (repealed)).

4 British Museum Act 1963 s 8(1) (as amended: see note 3). As to the appointment of the trustees see s 8(2) (amended by SI 1992/1311). The British Museum Act 1963 ss 2-7 (see PARAS 829-830, 832-833) and Sch 1 (see PARA 827) apply in relation to the Natural History Museum and the trustees thereof as they apply in relation to the British Museum and the trustees thereof, with adaptations: see s 8(3) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 1(3)(a)).

5 See the British Museum Act 1963 s 8(4).

6 British Museum Act 1963 Sch 2 para 1(1)(a). See also note 3.

7 British Museum Act 1963 Sch 2 para 1(1)(b). The British Museum Act 1938 is repealed: see note 3.

8 British Museum Act 1963 Sch 2 para 1(2). Subject to the provisions of the British Museum Act 1963, all matters and things having effect in relation to the British Museum (Natural History) immediately before 30 September 1963 continue as nearly as may be to have effect in relation to the Natural History Museum thereafter: Sch 2 para 4 (amended by the Museums and Galleries Act 1992 Sch 8 para 1(2), (3)(b)).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/A. THE BRITISH MUSEUM AND THE NATURAL HISTORY MUSEUM/827. Trustees.

827. Trustees.

The trustees of the British Museum are a body corporate with perpetual succession and a common seal, having the general management and control of the British Museum¹. They consist of 25 persons: (1) one appointed by Her Majesty²; (2) 15 appointed by the Prime Minister³; (3) four appointed by the Secretary of State on the nominations of the Presidents of the Royal Society, the Royal Academy, the British Academy, and the Society of Antiquaries of London, respectively⁴; and (4) five appointed by the trustees of the British Museum⁵.

The trustees' functions may be exercised notwithstanding vacancies in their number⁶. The trustees may make rules for regulating their proceedings and for other matters relevant to the exercise of their functions⁷.

1 See the British Museum Act 1963 s 1(1).

2 British Museum Act 1963 s 1(1)(a).

3 British Museum Act 1963 s 1(1)(b). As to the Prime Minister see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 394-398.

4 British Museum Act 1963 s 1(1)(c) (amended by SI 1992/1311). As to the Secretary of State see PARA 802 note 2.

5 British Museum Act 1963 s 1(1)(d). As to the tenure of office of the trustees see Sch 1 paras 1, 2.

6 British Museum Act 1963 Sch 1 para 3.

7 British Museum Act 1963 Sch 1 para 5. As to quorum see Sch 1 para 4.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/A. THE BRITISH MUSEUM AND THE NATURAL HISTORY MUSEUM/828. Director and staff.

828. Director and staff.

There is a Director of the British Museum and a Director of the Natural History Museum, who must be persons appointed respectively by the trustees of the British Museum¹ and the Natural History trustees² with the approval of the Prime Minister³, and who hold office on such terms and subject to such conditions as the Treasury⁴ may direct⁵. They are responsible to the trustees for the care of all property in their possession and for the general administration of the museum⁶.

Subject to Treasury consent as to numbers and conditions of service, the trustees may appoint such other officers and servants as they think fit; and there must be paid to the director and officers and servants so appointed such salaries, allowances and other remuneration as the Treasury may determine⁷. Museum staff may be included in a civil service pension scheme under the Superannuation Act 1972⁸.

- 1 As to the trustees of the British Museum see PARA 827.
- 2 As to the meaning of 'Natural History trustees' see PARA 826.
- 3 As to the Prime Minister see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 394-398.
- 4 As to the meaning of 'Treasury' see PARA 809 note 4.
- 5 See the British Museum Act 1963 ss 6(1), 8(3) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 1(1), (2), (3)(a)).
- 6 See the British Museum Act 1963 ss 6(1), 8(3) (as amended: see note 5).
- 7 See the British Museum Act 1963 ss 6(2), 8(3) (as amended: see note 5).
- 8 See the Superannuation Act 1972 s 1(4), Sch 1; and PARA 896. See also *Tucker v British Museum Trustees* (1967) 112 Sol Jo 70, CA, where it was held under the British Museum Act 1753 s 15 (repealed), that an employee was not entitled to have the proceedings for his dismissal conducted judicially.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/A. THE BRITISH MUSEUM AND THE NATURAL HISTORY MUSEUM/829. Trustees' powers.

829. Trustees' powers.

The trustees of the British Museum¹ and the Natural History trustees² have power, subject to the restrictions imposed on them by virtue of any enactment³, to enter into contracts and other agreements, to acquire and hold land and other property and to do all other things that appear to them necessary or expedient for the purposes of their functions⁴.

At intervals of not more than three years, the trustees must prepare and lay before each House of Parliament a report on the museums⁵.

Byelaws, ordinances, statutes or rules in force⁶ immediately before 30 September 1963⁷ are not invalidated by the repeal of their enabling provision but have effect in relation to each museum, with such modifications as may be necessary in consequence of the British Museum Act 1963, as if they were rules made⁸ by the trustees of the relevant museum⁹.

Notwithstanding anything in any enactment, the trustees of the British Museum and the Natural History trustees may make such charges for admission to their museums as they may determine¹⁰.

There is a statutory obligation to deliver to the trustees of the British Museum free of charge a copy of the actual script¹¹ on which the public performance of a new play¹² is based¹³, but in practice this obligation is satisfied by the delivery of such scripts to the British Library¹⁴.

1 As to the trustees of the British Museum see PARA 827.

2 As to the meaning of 'Natural History trustees' see PARA 826.

3 Ie whether contained in the British Museum Act 1963 or not: see s 2. As to the meaning of 'enactment' see PARA 805 note 5. The Secretary of State may transfer land to the trustees: see the Museums and Galleries Act 1992 s 8, Sch 6; and PARA 822. As to the Secretary of State see PARA 802 note 2.

4 British Museum Act 1963 ss 2, 8(3) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 1(1), (2), (3)(a)). Certain records of the British Museum and the Natural History Museum are public records for the purposes of the Public Records Act 1958: see s 10, Sch 1 para 3, Table Pt II; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 835.

5 See the British Museum Act 1963 ss 7, 8(3) (as amended: see note 4). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

6 Ie under the British Museum Act 1753 s 14 or s 15 (repealed).

7 Ie the date of commencement of the British Museum Act 1963: see s 13(2), (6); and the British Museum Act 1963 (Commencement) Order 1963, SI 1963/1546.

8 Ie under the British Museum Act 1963 Sch 1 para 5: see PARA 827.

9 British Museum Act 1963 s 13(6).

10 See the Museums and Galleries Admission Charges Act 1972 s 1 (amended by the Museums and Galleries Act 1992 Sch 8 para 1(1), (2), (6)).

11 'Script', in relation to a play, means the text of the play, whether expressed in words or in musical or other notation, together with any stage or other directions for its performance, whether contained in a single document or not: Theatres Act 1968 s 9(2).

12 'Public performance of a new play' means a public performance of a play of which no previous public performance has ever been given in Great Britain, but does not include a public performance of a play which is (1) based on a script substantially the same as that on which a previous public performance of a play given there was based; or (2) based substantially on a text of the play which has been published in the United Kingdom: Theatres Act 1968 s 11(3). A performance of a play given solely or primarily for one or more of the specified purposes is, however, to be disregarded: s 11(4). The specified purposes are: (a) rehearsal; (b) to enable (i) a record or cinematograph film to be made from or by means of the performance; or (ii) the performance to be broadcast; or (iii) the performance to be included in a programme service within the meaning of the Broadcasting Act 1990 (see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 76), other than a sound or television broadcasting service: Theatres Act 1968 s 7(2)(a), (b) (amended by the Broadcasting Act 1990 s 203(1), Sch 20 para 13; applied by the Theatres Act 1968 s 11(4)). 'Record' means any record or similar contrivance for reproducing sound, including the soundtrack of a cinematograph film; 'cinematograph film' means any print, negative, tape or other article on which a performance of a play or any part of such a performance is recorded for the purposes of visual reproduction; and 'broadcast' means broadcast by wireless telegraphy (within the meaning of the Wireless Telegraphy Act 2006: see **TELECOMMUNICATIONS AND BROADCASTING**), whether by way of sound broadcasting or television: Theatres Act 1968 s 7(3) (amended the Wireless Telegraphy Act 2006 s 123, Sch 7 para 3; and as so applied). As to the meanings of 'Great Britain' and 'United Kingdom' see PARA 804 note 2.

13 Theatres Act 1968 s 11(1). The copy must be delivered within one month from the date of the performance and the trustees must give a written receipt for every script so delivered to them: see s 11(1). If these requirements are not complied with in the case of any performance to which they apply, any person who presented that performance is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 11(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the meaning of 'month' see PARA 803 note 11. As to the meaning of 'written' see PARA 805 note 14. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

14 As to the British Library see PARA 906 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/A. THE BRITISH MUSEUM AND THE NATURAL HISTORY MUSEUM/830. Keeping and inspection of the collections.

830. Keeping and inspection of the collections.

Subject to the provisions of the British Museum Act 1963, it is the duty of the trustees of the British Museum¹ and of the Natural History trustees² to keep the objects comprised in the collections of the British Museum and the Natural History Museum within the authorised repositories of the museums³, except in so far as they may consider it expedient to remove them temporarily for any purpose connected with the administration of the museums and the care of their collections⁴. When it appears to the trustees that any such objects cannot conveniently be kept within the authorised repositories, they may store them at other premises in Great Britain⁵ if satisfied that they can be stored in those premises without detriment to the museums' purposes⁶.

The trustees must secure, so far as appears to them to be practicable, that the objects comprised in the collections of each museum, including those stored under these provisions, are, when required for inspection by members of the public, made available in one or other of the authorised repositories under such conditions as the trustees think fit to impose for preserving the collections' safety and ensuring the museums' proper administration⁷. Objects vested in the trustees as part of the museums' collections must not be disposed of by them otherwise than under the statutory provisions⁸ authorising disposal and transfer⁹.

1 As to the trustees of the British Museum see PARA 827.

2 As to the meaning of 'Natural History trustees' see PARA 826.

3 As to the authorised repositories see the British Museum Act 1963 s 10; and PARA 831.

4 British Museum Act 1963 ss 3(1), 8(3) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 1(2), (2), (3)(a)).

5 As to the meaning of 'Great Britain' see PARA 804 note 2.

6 British Museum Act 1963 ss 3(2), 8(3) (as amended: see note 4).

7 British Museum Act 1963 ss 3(3), 8(3) (as amended: see note 4).

8 Ie the British Museum Act 1963 s 5 (see PARA 833) or s 9 (see PARA 834) or the Museums and Galleries Act 1992 s 6 (see PARA 820); British Museum Act 1963 ss 3(4), 8(3) (s 3(4) amended by the Museums and Galleries Act 1992 Sch 8 para 5(a); British Museum Act 1963 s 8(3) as amended: see note 4). As to the transfer of the British Museum Library see the British Library Act 1972 s 3; and PARA 907. As to lending objects for exhibition see PARA 832.

9 British Museum Act 1963 s 3(4) (as amended: see note 8), s 8(3) (as amended: see note 4). In *A-G v Trustees of the British Museum (Commission for Looted Art in Europe intervening)* [2005] EWHC 1089 (Ch), [2005] Ch 397, (2005) Times, 2 June, [2005] All ER (D) 463 (May) (concerning a claim by the heirs of the owner of paintings looted by the Nazis) the following points were decided: (1) no moral obligation can justify a disposition by the trustees of an object forming part of the collection of the museum in breach of the British Museum Act 1963 s 3(4); some statutory authority is required; (2) the existence of the express exceptions in s 3(4) negatives the recognition of further but implied exceptions; (3) the word 'disposition' in s 3(4) is not limited to acts but may include omissions as well; (4) the bona fide compromise of a claim by persons to be entitled to objects forming part of the museum's collection may not involve any breach of s 3(4) if it involves a recognition that the objects have never been part of the collection, as s 3(4) applies only to objects which are part of the collection. As to Nazi spoliation and the Spoliation Advisory Panel see PARA 1102. See also the Holocaust (Return of Cultural Objects) Act 2009; and PARA 1103.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/A. THE BRITISH MUSEUM AND THE NATURAL HISTORY MUSEUM/831. Authorised repositories.

831. Authorised repositories.

The buildings for the time being occupying certain sites in London are the authorised repositories¹ for the collections of the British Museum², and the buildings for the time being occupying certain sites in London and in Tring, Hertfordshire are the authorised repositories for the collections of the Natural History Museum³.

A building or a site vested in the trustees of either museum, being an authorised repository or the site of an authorised repository, must not be sold or otherwise disposed of by them⁴.

1 It is the duty of the trustees of the museums to keep the collections of the museums at the authorised repositories: see the British Museum Act 1963 s 3; and PARA 830.

2 See the British Museum Act 1963 s 10(1). The specified sites are: (1) the British Museum, Great Russell Street, London; (2) 6 Burlington Gardens, London W1; (3) 48-56 Orsman Road, London N1 (even numbers only); (4) the former Office Savings Bank Building, Blythe Road, London W14; and (5) 23 Blythe Road, London W14: see Sch 3 Pt I (amended by SI 1973/1126; SI 1984/1181; SI 1995/1224). The Secretary of State may, with the agreement of the trustees concerned, by order amend the British Museum Act 1963 Sch 3 by adding a reference to a further site, or deleting the reference to the whole or any part of a site, or altering the description of a site; and any such order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 10(2) (amended by SI 1992/1311). The orders made are referred to in the references to the British Museum Act 1963 Sch 3 Pt I above and Pt II in note 3. As to the Secretary of State see PARA 802 note 2. As to the trustees of the British Museum see PARA 827. As to the trustees of the Natural History Museum see PARA 826. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

3 See the British Museum Act 1963 s 10(1) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 1(1), (2), (3)(a)). The specified sites are: (1) the Natural History Museum, South Kensington, London but excluding the part of that site known as the 'Central Boiler House'; (2) the site in Tring lying to the east of Akeman Street and occupied by the museum on 30 September 1963; (3) the site in Tring lying to the west of Akeman Street known as 67-69 Akeman Street; and (4) the site in Wandsworth known as 75 Kimber Road, London SW18 4NX excluding the site known as 249-251 Merton Road, London SW18 5EB: see the British Museum Act 1963 Sch 3 Pt II (amended by SI 1982/1238; SI 1985/462; SI 1995/654; SI 2004/1392; SI 2006/1547). As to the power of the Secretary of State to amend the British Museum Act 1963 Sch 3 see note 2.

4 British Museum Act 1963 s 10(3).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/A. THE BRITISH MUSEUM AND THE NATURAL HISTORY MUSEUM/832. Lending of objects.

832. Lending of objects.

The trustees of the British Museum¹ and the Natural History trustees² may lend for public exhibition or, in the case of the Natural History trustees, for research, in the United Kingdom³ or elsewhere, any object comprised in the museums' collections⁴. In deciding whether or not to lend any such object, and in determining the time for which, and the conditions subject to which, any such object is to be lent, the trustees must have regard to the interests of students and other persons visiting the museums, to the physical condition and degree of rarity of the object in question and to any risks to which it is likely to be exposed⁵.

- 1 As to the trustees of the British Museum see PARA 827.
- 2 As to the meaning of 'Natural History trustees' see PARA 826.
- 3 As to the meaning of 'United Kingdom' see PARA 804 note 2.
- 4 British Museum Act 1963 ss 4, 8(3)(a) (s 8(3) amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 1(1), (2), (3)(a)).
- 5 British Museum Act 1963 ss 4 proviso, 8(3) (as amended: see note 4). As to the government indemnity scheme in respect of objects on loan see PARA 1090. As to loans overseas see PARAS 1091, 1092.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/A. THE BRITISH MUSEUM AND THE NATURAL HISTORY MUSEUM/833. Disposal of objects.

833. Disposal of objects.

The trustees of the British Museum¹ and the Natural History trustees² may sell, exchange, give away or otherwise dispose of any object vested in them and comprised in their collections³ if: (1) the object is a duplicate of another such object⁴; (2) the object appears to them to have been made not earlier than the year 1850, and substantially consists of printed matter of which a copy made by photography or a process akin to photography is held by them⁵; or (3) in their opinion the object is unfit to be retained in the collections of the museum concerned and can be disposed of without detriment to the interests of students⁶. However, where an object has become vested in the trustees by virtue of a gift or bequest these powers of disposal are not exercisable as respects that object in a manner inconsistent with any condition attached to the gift or bequest⁷.

The trustees may destroy or otherwise dispose of any object vested in them and comprised in their collections if satisfied that it has become useless for their respective museums' purposes by reason of damage, physical deterioration, or infestation by destructive organisms⁸.

Money accruing to the trustees by virtue of an exercise of these powers or of their powers to transfer objects to certain other institutions⁹ must be laid out by them in the purchase of objects to be added to the museums' collections¹⁰.

In certain circumstances the trustees may also transfer an object from their collections under the Holocaust (Return of Cultural Objects) Act 2009¹¹.

1 As to the trustees of the British Museum see PARA 827.

2 As to the meaning of 'Natural History trustees' see PARA 826.

3 As to the general prohibition on the disposal of objects in the museums' collections see s 3; and PARA 830.

4 British Museum Act 1963 ss 5(1)(a), 8(3) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 1(1), (2), (3)(a)).

5 British Museum Act 1963 ss 5(1)(b), 8(3) (as amended: see note 4).

6 British Museum Act 1963 ss 5(1)(c), 8(3) (as amended: see note 4).

7 British Museum Act 1963 ss 5(1) proviso, 8(3) (as amended: see note 4).

8 British Museum Act 1963 ss 5(2), 8(3) (as amended: see note 4).

9 Ie the powers contained in the Museums and Galleries Act 1992 s 6: see PARA 820.

10 British Museum Act 1963 ss 5(3), 8(3) (s 5(3) amended by the Museums and Galleries Act 1992 Sch 8 para 5(b); British Museum Act 1963 s 8(3) as amended: see note 4).

11 See PARA 1103.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/A. THE BRITISH MUSEUM AND THE NATURAL HISTORY MUSEUM/834. Transfers to other institutions.

834. Transfers to other institutions.

Any moveable property vested in the trustees of the British Museum¹ or the Natural History trustees² may be transferred by one to the other³. The trustees are specified transferors and transferees for the purposes of the general powers of transfer between collections⁴ and the statutory provision for vesting of gifts to the nation where the donor has not specified a destination⁵.

1 As to the trustees of the British Museum see PARA 827.

2 As to the meaning of 'Natural History trustees' see PARA 826.

3 See the British Museum Act 1963 s 9(1) (amended by the Museums and Galleries Act 1992 s 11(3), Sch 9). As to the general prohibition on the disposal of objects in the museums' collections see s 3; and PARA 830.

4 See the Museums and Galleries Act 1992 s 6, Sch 5; and PARA 820.

5 See the Museums and Galleries Act 1992 s 7: see PARA 821.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/B. THE NATIONAL GALLERY, THE NATIONAL PORTRAIT GALLERY, THE TATE GALLERY AND THE WALLACE COLLECTION/835. Introduction.

B. THE NATIONAL GALLERY, THE NATIONAL PORTRAIT GALLERY, THE TATE GALLERY AND THE WALLACE COLLECTION

835. Introduction.

The National Gallery was established in 1824¹ and the National Portrait Gallery was established in 1856².

The Tate Gallery was opened in 1897 as a result of private benefaction³, and was originally operated as a branch of the National Gallery. It subsequently acquired its own trustees, but its contents remained vested in the National Gallery Trustees⁴. However, on 14 February 1955 the responsibility for the collection at the Tate Gallery passed from the National Gallery Trustees to the Tate Gallery Trustees⁵ and the pictures and other works of art which on that day formed part of the collection vested in them⁶. The Tate Gallery collection is intended to be a national collection of British paintings, modern foreign art and modern sculpture⁷.

Dame Amelie Julie Charlotte Wallace, the widow of Sir Richard Wallace, by her will dated 23 May 1894⁸, bequeathed to the British nation her pictures, porcelain, bronzes, artistic furniture, armour, miniatures, snuffboxes and works of art placed on the ground and first floors and in the galleries of Hertford House, Manchester Square, and the Louis XIV balustrade at Hertford House, on condition that the government for the time being should agree to give a site in a central part of London and build on it a special museum to contain the collection, which should be always kept together unmixed with other objects of art, and should be styled 'The Wallace Collection'. The Treasury accepted the bequest on behalf of the nation and subsequently acquired Hertford House for the purpose of housing and maintaining the collection in it. It was agreed between the Treasury and the residuary legatee under the will that the collection should remain at Hertford House and that no other site should be given or acquired or building erected for the purpose of containing it. The residuary legatee waived any claim he might otherwise have had or have been entitled to raise to the collection as forming part of the residuary estate by reason or on account of the non-fulfilment of the condition to build a special museum. The first trustees were appointed by the Treasury by Treasury Minute dated 28 July 1897⁹.

The National Gallery Act 1856 and the National Gallery and Tate Gallery Act 1954, which formerly regulated most of the activities of the National Gallery and the Tate Gallery, were repealed in 1992¹⁰. The Museums and Galleries Act 1992 now provides for the establishment of incorporated Boards of Trustees of the National Gallery, Tate Gallery, National Portrait Gallery and Wallace Collection, the transfer of property to them and the conferring of functions on them¹¹.

1 See Treasury Minute, 24 March 1824.

2 See Treasury Minute, 2 December 1856.

3 The cost of erecting the gallery and the nucleus of the present collection were donated by Sir Henry Tate.

4 Under the terms of a Treasury letter of 24 March 1917, a separate board for the Tate Gallery was constituted.

5 See the National Gallery and Tate Gallery Act 1954 ss 1(1), 8(3) (repealed); the National Gallery and Tate Gallery Act 1954 (Commencement) Order 1955, SI 1955/230 (spent).

6 National Gallery and Tate Gallery Act 1954 s 1(2) (repealed).

7 Treasury Minute, 5 February 1955.

8 See the trust deed of 27 July 1899.

9 See the trust deed of 27 July 1899.

10 Museums and Galleries Act 1992 s 11(3), Sch 9.

11 See the Museums and Galleries Act 1992 s 11(4); and the Museum and Galleries Act 1992 (Commencement) Order 1992, SI 1992/1874. As to transfers to and from certain specified institutions see PARA 820. As to financial provision see PARA 895. As to the government indemnity scheme for loans see PARA 1090.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/B. THE NATIONAL GALLERY, THE NATIONAL PORTRAIT GALLERY, THE TATE GALLERY AND THE WALLACE COLLECTION/836. Establishment of the Boards of Trustees.

836. Establishment of the Boards of Trustees.

Bodies corporate¹ known as: (1) the Board of Trustees of the National Gallery (the 'National Gallery Board')²; (2) the Board of Trustees of the Tate Gallery (the 'Tate Gallery Board')³; (3) the Board of Trustees of the National Portrait Gallery (the 'National Portrait Gallery Board')⁴; and (4) the Board of Trustees of the Wallace Collection (the 'Wallace Collection Board')⁵ have been established⁶. On 1 September 1992⁷ all the property and rights which immediately before that day were held by any of the new boards' predecessor trustees⁸ in their capacity as such, and any liabilities or obligations to which, immediately before that day, any of those trustees were subject in that capacity, were transferred to and vested in the relevant new board⁹.

The new boards are not to be regarded as the servants or agents of the Crown or as enjoying any status, immunity or privilege of the Crown¹⁰; nor are the trustees and their staff to be regarded as civil servants¹¹. The new boards' property is not to be regarded as property of, or held on behalf of, the Crown¹².

The validity of any proceedings of each new board is not affected by any vacancy among the trustees or by any defect in the appointment of any trustee¹³. The fixing of the seal of each new board must be authenticated by the signature of the chairman or of some other person authorised either generally or specially by the board to act for that purpose¹⁴. A document purporting to be duly executed under the seal of a new board, or to be signed on that board's behalf, is receivable in evidence and, unless the contrary is proved, is deemed to be so executed or signed¹⁵.

1 As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 2; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1101 et seq.

2 Museums and Galleries Act 1992 s 1(1)(a). As to the constitution of the board see Sch 1 para 2 (amended by SI 1992/1311). As to the proceedings of the board see the Museums and Galleries Act 1992 Sch 1 para 4. As to the payment of allowances see Sch 1 para 5 (amended by SI 1992/1311).

3 Museums and Galleries Act 1992 s 1(1)(b). As to the constitution of the board see Sch 2 para 2 (amended by SI 1992/1311; SI 2008/919). As to the proceedings of the board see the Museums and Galleries Act 1992 Sch 2 para 4. As to the payment of allowances see Sch 2 para 5 (amended by SI 1992/1311).

4 Museums and Galleries Act 1992 s 1(1)(c). As to the constitution of the board see Sch 3 para 2 (amended by SI 1992/1311). As to the proceedings of the board see the Museums and Galleries Act 1992 Sch 3 para 4. As to the payment of allowances see Sch 3 para 5 (amended by SI 1992/1311).

5 Museums and Galleries Act 1992 s 1(1)(d). As to the constitution of the board see Sch 4 para 2 (amended by SI 1992/1311). As to the proceedings of the board see the Museums and Galleries Act 1992 Sch 4 para 4. As to the payment of allowances see Sch 4 para 5 (amended by SI 1992/1311).

6 Museums and Galleries Act 1992 s 1(1). Any reference in the Museums and Galleries Act 1992 to a 'new board' is a reference to any of these boards: see s 1(1). Each of the new boards, so far as it is a charity, and any institution which is administered by or on its behalf and established for general or special purposes, is an exempt charity for the purposes of the Charities Act 1993: see ss 3, 96(1), Sch 2; and **CHARITIES** vol 8 (2010) PARA 315.

7 Is the vesting day for each new board: see the Museums and Galleries Act 1992 ss 1(10), 11(4); Museums and Galleries Act 1992 (Commencement) Order 1992, SI 1992/1874.

8 'Predecessor trustees' means (1) in relation to the National Gallery Board, the National Gallery Trustees; (2) in relation to the Tate Gallery Board, the Tate Gallery Trustees; (3) in relation to the National Portrait Gallery Board, the National Portrait Gallery Trustees; and (4) in relation to the Wallace Collection Board, the Trustees of the Wallace Collection: Museums and Galleries Act 1992 s 1(10).

9 See the Museums and Galleries Act 1992 s 1(3). References in s 1(3) to property, rights, liabilities and obligations are references to any property, rights, liabilities or obligations whether or not capable of being transferred or assigned: s 1(4). For further provision as to the transfer of property, rights, liabilities and obligations to the new boards see s 1(5)-(9) (s 1(7) amended by the Employment Rights Act 1996 s 240, Sch 1 para 55).

10 Museums and Galleries Act 1992 Sch 1 para 1(1); Sch 2 para 1(1); Sch 3 para 1(1); Sch 4 para 1(1). However, in relation to any matter as respects which the new board acts by virtue of a direction under s 2(7) (see PARA 838), the board enjoys the same privileges, immunities and exemptions as those enjoyed in relation to that matter by the minister giving the direction: Sch 1 para 1(3); Sch 2 para 1(3); Sch 3 para 1(3); Sch 4 para 1(3). As to the legal status of bodies not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

11 Museums and Galleries Act 1992 Sch 1 para 1(2); Sch 2 para 1(2); Sch 3 para 1(3); Sch 4 para 1(2). As to staff pensions, however, see PARA 896. As to the civil service see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 549 et seq.

12 Museums and Galleries Act 1992 Sch 1 para 1(2); Sch 2 para 1(2); Sch 3 para 1(3); Sch 4 para 1(2).

13 See the Museums and Galleries Act 1992 Sch 1 para 4(8); Sch 2 para 4(8); Sch 3 para 4(8); Sch 4 para 4(8).

14 See the Museums and Galleries Act 1992 Sch 1 para 6(1); Sch 2 para 6(1); Sch 3 para 6(1); Sch 4 para 6(1). As to the corporate seal see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1122 et seq.

15 See the Museums and Galleries Act 1992 Sch 1 para 6(2); Sch 2 para 6(2); Sch 3 para 6(2); Sch 4 para 6(2). Certain records of each of the National Gallery, Tate Gallery, National Portrait Gallery and the Wallace Collection are public records for the purposes of the Public Records Act 1958: see s 10, Sch 1 para 3, Table Pt II; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 835.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/B. THE NATIONAL GALLERY, THE NATIONAL PORTRAIT GALLERY, THE TATE GALLERY AND THE WALLACE COLLECTION/837. Directors and staff.

837. Directors and staff.

There is a director of the National Gallery, a director of the Tate Gallery, a director of the National Portrait Gallery and a director of the Wallace Collection, each appointed by the relevant new board¹ with the approval of the Prime Minister². Each director is responsible to the relevant board for the general exercise of that board's functions³.

Each new board may appoint such other employees as it thinks fit⁴. Subject to such conditions as the Secretary of State⁵ may impose with the consent of the Treasury⁶, each new board must pay to its employees such remuneration and allowances as the board may determine⁷, and the employees are appointed on such other terms and conditions as the board may determine⁸.

1 As to the meaning of 'new board' see PARA 836 note 6.

2 See the Museums and Galleries Act 1992 Sch 1 para 3(1); Sch 2 para 3(1); Sch 3 para 3(1); Sch 4 para 3(1). For transitional provisions relating to the appointment of the directors see Sch 1 para 3(5); Sch 2 para 3(5); Sch 3 para 3(5); Sch 4 para 3(5). As to the Prime Minister see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 394-398.

3 See the Museums and Galleries Act 1992 Sch 1 para 3(2); Sch 2 para 3(2); Sch 3 para 3(2); Sch 4 para 3(2). As to the general functions of the boards see PARA 838.

4 See the Museums and Galleries Act 1992 Sch 1 para 3(3); Sch 2 para 3(3); Sch 3 para 3(3); Sch 4 para 3(3).

5 As to the Secretary of State see PARA 802 note 2.

6 As to the meaning of 'Treasury' see PARA 809 note 4.

7 See the Museums and Galleries Act 1992 Sch 1 para 3(4)(a); Sch 2 para 3(4)(a); Sch 3 para 3(4)(a); Sch 4 para 3(4)(a) (all amended by SI 1992/1311).

8 See the Museums and Galleries Act 1992 Sch 1 para 3(4)(b); Sch 2 para 3(4)(b); Sch 3 para 3(4)(b); Sch 4 para 3(4)(b). As to staff pensions see PARA 896.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/B. THE NATIONAL GALLERY, THE NATIONAL PORTRAIT GALLERY, THE TATE GALLERY AND THE WALLACE COLLECTION/838. General functions of the new boards.

838. General functions of the new boards.

So far as practicable and subject to the provisions of the Museums and Galleries Act 1992:

- 43 (1) the National Gallery Board must maintain a collection of works of art, principally consisting of pictures, of established merit or significance, and of documents relating to those works¹;
- 44 (2) the Tate Gallery Board must maintain a collection of British works of art and of documents relating to those works, and a collection of twentieth century and contemporary works of art and of documents relating to those works²;
- 45 (3) the National Portrait Gallery Board must maintain a collection of portraits of the most eminent persons in British history, of other works of art relevant to portraiture and of documents relating to those portraits and other works of art³; and
- 46 (4) the Wallace Collection Board must maintain the collection of objects known as the Wallace Collection⁴.

The Wallace Collection Board must:

- 47 (a) care for and preserve the objects in its collection⁵;
- 48 (b) secure that they are exhibited to the public⁶;
- 49 (c) secure that they are available to persons⁷ seeking to inspect them in connection with study or research⁸; and
- 50 (d) generally promote the public's enjoyment and understanding of fine and applied art both by means of the board's collection and by such other means as the board considers appropriate⁹.

Each of the other new boards¹⁰ must:

- 51 (i) care for, preserve and add to the works of art (including, in the case of the National Portrait Gallery, the portraits) and the documents in their collection¹¹;
- 52 (ii) secure that the works of art (or, in the case of the National Portrait Gallery, the portraits) are exhibited to the public¹²;
- 53 (iii) secure that the works of art (including, in the case of the National Portrait Gallery, the portraits) and the documents are available to persons seeking to inspect them in connection with study or research¹³; and
- 54 (iv) generally promote the public's enjoyment and understanding of:

1
 1. (A) in the case of the National Gallery, painting and other fine art¹⁴;
 2. (B) in the case of the Tate Gallery, British art, and of twentieth century and contemporary art¹⁵; and
 3. (C) in the case of the National Portrait Gallery, portraiture of British persons and British history through portraiture¹⁶,

2
 55 both by means of their collections and by such other means as they consider appropriate¹⁷.

For the purposes of the above provisions, a new board may provide education, instruction and advice and carry out research¹⁸; may enter into contracts and other agreements¹⁹; may acquire and dispose of land²⁰ and other property²¹; and has other incidental powers²².

If a Minister of the Crown directs a new board to exercise functions which are exercisable by him (whether by virtue of an enactment or otherwise)²³, in his opinion can appropriately be exercised by that new board, having regard to its functions and resources²⁴, and are specified in the direction²⁵, the new board must exercise them on his behalf in such manner as he may from time to time direct²⁶.

- 1 Museums and Galleries Act 1992 s 2(1). As to the National Gallery Board see PARA 836.
- 2 Museums and Galleries Act 1992 s 2(2). As to the Tate Gallery Board see PARA 836.
- 3 Museums and Galleries Act 1992 s 2(3). As to the National Portrait Gallery Board see PARA 836.
- 4 Museums and Galleries Act 1992 s 2(1). The Wallace Collection Board may neither add to, nor dispose of any object comprised in, its collection: see s 4(6); and PARA 842. As to the Wallace Collection Board see PARA 836. As to the Wallace Collection see PARA 835.
- 5 Museums and Galleries Act 1992 s 2(4)(a).
- 6 Museums and Galleries Act 1992 s 2(4)(b).
- 7 As to the meaning of 'person' see PARA 803 note 16.
- 8 Museums and Galleries Act 1992 s 2(4)(c).
- 9 Museums and Galleries Act 1992 s 2(4)(d).
- 10 As to the meaning of 'new board' see PARA 836 note 6.
- 11 See the Museums and Galleries Act 1992 s 2(1)(a), (2)(a), (3)(a).
- 12 See the Museums and Galleries Act 1992 s 2(1)(b), (2)(b), (3)(b).
- 13 See the Museums and Galleries Act 1992 s 2(1)(c), (2)(c), (3)(c).
- 14 Museums and Galleries Act 1992 s 2(1)(d).
- 15 Museums and Galleries Act 1992 s 2(2)(d).
- 16 Museums and Galleries Act 1992 s 2(3)(d).
- 17 See the Museums and Galleries Act 1992 s 2(1)(d), (2)(d), (3)(d).
- 18 Museums and Galleries Act 1992 s 2(5)(a).
- 19 Museums and Galleries Act 1992 s 2(5)(b). The agreements may include agreements for the new board's occupation or management of its principal building or of other premises: see s 2(5)(b). A new board may allow premises occupied or managed by it to be used by other persons (for payment or otherwise) for purposes not connected with the functions mentioned in whichever of s 2(1)-(4) (see the text to notes 1-17) has effect in relation to that new board, if the new board is satisfied that to do so would not conflict unduly with those functions: s 2(9). The reference in s 2(5)(b) to a new board's 'principal building' is a reference: (1) in the case of the National Gallery Board, to the premises known as the National Gallery (s 2(10)(a)); (2) in the case of the Tate Gallery Board, to the premises known as the Tate Gallery (s 2(10)(b)); (3) in the case of the National Portrait Gallery Board, to the premises known as the National Portrait Gallery (s 2(10)(c)); and (4) in the case of the Wallace Collection Board, to the premises known as Hertford House (s 2(10)(d)).
- 20 A new board must not acquire or dispose of land without the consent of the Secretary of State: Museums and Galleries Act 1992 s 2(8) (amended by SI 1992/1311). As to the meaning of 'land' see PARA 804 note 30. As to the Secretary of State see PARA 802 note 2.
- 21 Museums and Galleries Act 1992 s 2(5)(c).

22 See Museums and Galleries Act 1992 s 2(6). Subject to the provisions of the Museums and Galleries Act 1992, a new board may do such things (including requiring payment for admission or for other services or for goods provided by the board) as it thinks necessary or expedient: (1) for preserving, and increasing the utility of, its collection (s 2(6)(a)); (2) for securing the due administration of anything vested in or acquired by the board, and any premises occupied or managed by the board, under or by virtue of the Museums and Galleries Act 1992 (s 2(6)(b)); and (3) otherwise for the purposes of its functions (s 2(6)(c)).

23 Museums and Galleries Act 1992 s 2(7)(a). As to the meaning of 'enactment' see PARA 805 note 5.

24 Museums and Galleries Act 1992 s 2(7)(b).

25 Museums and Galleries Act 1992 s 2(7)(c).

26 Museums and Galleries Act 1992 s 2(7). However, nothing in this provision authorises the new board to exercise a function of making regulations or other instruments of a legislative character: s 2(7). In relation to any matter as respects which a new board acts by virtue of a direction under s 2(7), the board enjoys the same privileges, immunities and exemptions as those enjoyed in relation to that matter by the minister giving the direction: see Sch 1 para 1(3), Sch 2 para 1(3), Sch 3 para 1(3), Sch 4 para 1(3); and PARA 836.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/B. THE NATIONAL GALLERY, THE NATIONAL PORTRAIT GALLERY, THE TATE GALLERY AND THE WALLACE COLLECTION/839. Reports to the Secretary of State.

839. Reports to the Secretary of State.

Each new board¹ must make to the Secretary of State² a report on the exercise of its functions³ since the making of its last report⁴. The first such report was to be made not later than the end of the period of three years (or such shorter period as the Secretary of State directed) beginning with the day of the new board's establishment⁵; and each subsequent report must be made not later than three years (or such shorter period as the Secretary of State may direct) after the last was made⁶.

The Secretary of State must lay a copy of each report before each House of Parliament⁷.

1 As to the meaning of 'new board' see PARA 836 note 6.

2 As to the Secretary of State see PARA 802 note 2.

3 As to the general functions of the boards see PARA 838.

4 See the Museums and Galleries Act 1992 Sch 1 para 7(1); Sch 2 para 7(1); Sch 3 para 7(1); Sch 4 para 7(1) (all amended by SI 1992/1311).

5 See the Museums and Galleries Act 1992 Sch 1 para 7(2); Sch 2 para 7(2); Sch 3 para 7(2); Sch 4 para 7(2) (all amended by SI 1992/1311). The new boards were established on 1 September 1992: see PARA 836.

6 See the Museums and Galleries Act 1992 Sch 1 para 7(3); Sch 2 para 7(3); Sch 3 para 7(3); Sch 4 para 7(3) (all amended by SI 1992/1311).

7 Museums and Galleries Act 1992 Sch 1 para 7(4); Sch 2 para 7(4); Sch 3 para 7(4); Sch 4 para 7(4) (all amended by SI 1992/1311). As to laying documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/B. THE NATIONAL GALLERY, THE NATIONAL PORTRAIT GALLERY, THE TATE GALLERY AND THE WALLACE COLLECTION/840. Power to form companies.

840. Power to form companies.

With the consent of the Secretary of State¹, each new board² may form, or take part in forming, one or more bodies corporate which, or each of which, has as its main object or objects one or more of those mentioned below³ in relation to that new board⁴, or any other object or objects incidental to the new board's functions⁵. A new board so authorised to form or take part in forming any such body may hold interests in any such body, exercise rights conferred by the holding of interests in it, and provide financial or other assistance to or in respect of it (including assistance by way of guarantee of its obligations)⁶.

The specified objects are:

- 56 (1) the production and publication of books, films or other informative material relating:
 - 3
 - 4. (a) in the case of the National Gallery Board, to fine art⁷;
 - 5. (b) in the case of the Tate Gallery Board, to British art or twentieth century or contemporary art⁸;
 - 6. (c) in the case of the National Portrait Gallery Board, to portraiture of British persons or British history through portraiture⁹; and
 - 7. (d) in the case of the Wallace Collection Board, to fine or applied art¹⁰;
 - 4
 - 57 (2) the production of replicas or reproductions of works of art, or of souvenirs (or, in the case of the National Portrait Gallery Board, of replicas or reproductions of portraits of eminent British persons)¹¹;
 - 58 (3) in the case of the Tate Gallery Board, the commissioning of works of art¹²;
 - 59 (4) in the case of the National Portrait Gallery Board, the commissioning of portraits of eminent British persons¹³;
 - 60 (5) the sale¹⁴ of informative material relating to those fields of art with which the board's collection is concerned, and of replicas or productions of works of art (or, in the case of the National Portrait Gallery Board, of replicas or reproductions of portraits of eminent British persons) or of souvenirs or other goods¹⁵; and
 - 61 (6) the provision¹⁶ of catering or car parking or other services or facilities for the public at any premises occupied or managed by the board¹⁷.

1 As to the Secretary of State see PARA 802 note 2.

2 As to the meaning of 'new board' see PARA 836 note 6.

3 Ie mentioned in the Museums and Galleries Act 1992 s 3(2)-(5): see heads (1)-(6) in the text.

4 Museums and Galleries Act 1992 s 3(1)(a) (s 3(1) amended by SI 1992/1311).

5 Museums and Galleries Act 1992 s 3(1)(b) (as amended: see note 4).

6 Museums and Galleries Act 1992 s 3(6). Section 3 is without prejudice to any power of a new board to undertake by virtue of s 2 (see PARA 838) anything mentioned in s 3(1)(b) (see the text to note 5) or in whichever of s 3(2)-(5) (see heads (1)-(6) in the text) has effect in relation to that new board: s 3(7).

7 See the Museums and Galleries Act 1992 s 3(2)(a). As to the National Gallery Board see PARA 836.

- 8 See the Museums and Galleries Act 1992 s 3(3)(a). As to the Tate Gallery Board see PARA 836.
- 9 See the Museums and Galleries Act 1992 s 3(4)(a). As to the National Portrait Gallery Board see PARA 836.
- 10 See the Museums and Galleries Act 1992 s 3(5)(a). As to the Wallace Collection Board see PARA 836.
- 11 See the Museums and Galleries Act 1992 s 3(2)(b), (3)(c), (4)(c), (5)(b).
- 12 Museums and Galleries Act 1992 s 3(3)(b).
- 13 Museums and Galleries Act 1992 s 3(4)(b).
- 14 If whether or not at an hour when the collection is open to the public for viewing: see the Museums and Galleries Act 1992 s 3(2)(c), (3)(d), (4)(d), (5)(c).
- 15 See the Museums and Galleries Act 1992 s 3(2)(c), (3)(d), (4)(d), (5)(c).
- 16 If whether or not at an hour when the collection is open to the public for viewing: see the Museums and Galleries Act 1992 s 3(2)(d), (3)(e), (4)(e), (5)(d).
- 17 Museums and Galleries Act 1992 s 3(2)(d), (3)(e), (4)(e), (5)(d).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/B. THE NATIONAL GALLERY, THE NATIONAL PORTRAIT GALLERY, THE TATE GALLERY AND THE WALLACE COLLECTION/841. Acquisition of land.

841. Acquisition of land.

The Secretary of State¹ may acquire land for the enlargement or improvement of the National Gallery². He may also transfer land to the National Gallery, the Tate Gallery, the National Portrait Gallery or the Wallace Collection³.

1 As to the Secretary of State see PARA 802 note 2.

2 See the National Gallery Enlargement Act 1866 s 16.

3 See the Museums and Galleries Act 1992 s 8, Sch 6; and PARA 822.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/B. THE NATIONAL GALLERY, THE NATIONAL PORTRAIT GALLERY, THE TATE GALLERY AND THE WALLACE COLLECTION/842. Acquisition and disposal of pictures and other objects.

842. Acquisition and disposal of pictures and other objects.

The National Gallery Board, the Tate Gallery Board and the National Portrait Gallery Board¹ may, in particular, acquire (whether by purchase, exchange or gift) any relevant objects² which, in the opinion of the board concerned, it is desirable to add to that board's collection³.

The National Gallery Board may not, however, dispose of a relevant object the property in which is vested in the board and which is comprised in its collection unless the disposal is an exercise of the statutory power⁴ of transfer⁵. Nor may the Tate Gallery Board dispose of a relevant object the property in which is vested in that board and which is comprised in its collections unless the disposal⁶:

- 62 (1) is an exercise of the statutory power of transfer⁷; or
- 63 (2) is of a relevant object which, in the board's opinion, is unsuitable for retention in its collections and can be disposed of without detriment to the interests of students or other members of the public⁸; or
- 64 (3) is (by whatever means, including destruction) of a relevant object which the board is satisfied has become useless for the purposes of its collections by reason of damage, physical deterioration, or infestation by destructive organisms⁹.

The National Portrait Gallery Board may not dispose of a relevant object the property in which is vested in the board and which is comprised in its collection unless the disposal:

- 65 (a) is an exercise of the statutory power of transfer¹⁰; or
- 66 (b) is by way of sale, exchange or gift of a relevant object which is a duplicate of another relevant object the property in which is so vested and which is so comprised¹¹; or
- 67 (c) is (by whatever means) of a portrait and the board is satisfied that the identification formerly accepted by the board of the person portrayed has been discredited¹²; or
- 68 (d) is (by whatever means, including destruction) of a relevant object which the board is satisfied has become useless for the purposes of its collection by reason of damage, physical deterioration or infestation by destructive organisms¹³.

The Wallace Collection Board may neither add any object to its collection nor dispose of any object the property in which is vested in the board and which is comprised in its collection¹⁴.

Money accruing to a new board¹⁵ by virtue of any disposal mentioned above must be applied by the board in the acquisition of relevant objects to be added to its collection¹⁶.

The National Gallery Board, the Tate Gallery Board, the National Portrait Gallery Board and the Wallace Collection Board may, in certain circumstances, transfer an object from their collections under the Holocaust (Return of Cultural Objects) Act 2009¹⁷.

¹ As to the National Gallery Board, the Tate Gallery Board and the National Portrait Gallery Board see PARA 836.

2 For these purposes, 'relevant objects' means: (1) in the case of the National Gallery Board, works of art (Museums and Galleries Act 1992 s 4(2)(a)); (2) in the case of the Tate Gallery Board, works of art (s 4(2)(b)); and (3) in the case of the National Portrait Gallery Board, portraits or other works of art relevant to portraiture (s 4(2)(c)); and, in each case, includes any documents relating to a relevant object which falls, or has at any time fallen, within head (1), (2) or (3), as the case may be, and which is, or at that time was, comprised in the board's collection (s 4(2)).

3 Museums and Galleries Act 1992 s 4(1). As to the general functions of the boards see PARA 838.

4 In the power conferred by the Museums and Galleries Act 1992 s 6: see PARA 820.

5 Museums and Galleries Act 1992 s 4(3).

6 The Museums and Galleries Act 1992 s 4(4) is without prejudice to any trust or condition (express or implied) prohibiting or restricting disposal of the relevant object: s 4(4).

7 Museums and Galleries Act 1992 s 4(4)(a). The statutory power of transfer referred to is that conferred by s 6: see PARA 820.

8 Museums and Galleries Act 1992 s 4(4)(b).

9 Museums and Galleries Act 1992 s 4(4)(c).

10 Museums and Galleries Act 1992 s 4(5)(a). The statutory power of transfer referred to is that conferred by s 6: see PARA 820.

11 Museums and Galleries Act 1992 s 4(5)(b).

12 Museums and Galleries Act 1992 s 4(5)(c).

13 Museums and Galleries Act 1992 s 4(5)(d). A relevant object may be disposed of by the board as mentioned in this provision notwithstanding a trust or condition (express or implied) prohibiting or restricting the disposal of the relevant object: s 4(5).

14 Museums and Galleries Act 1992 s 4(6). As to the Wallace Collection see PARA 835.

15 As to the meaning of 'new board' see PARA 836 note 6.

16 Museums and Galleries Act 1992 s 4(7).

17 See PARA 1103.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/B. THE NATIONAL GALLERY, THE NATIONAL PORTRAIT GALLERY, THE TATE GALLERY AND THE WALLACE COLLECTION/843. Lending and borrowing of pictures and other objects.

843. Lending and borrowing of pictures and other objects.

The National Gallery Board, the Tate Gallery Board and the National Portrait Gallery¹ Board may lend any relevant object² the property in which is vested in the board and which is comprised in the board's collection, whether the loan is for purposes of public exhibition or not and whether, under the terms of the loan, the relevant object is to remain in the United Kingdom³ or not⁴. This power is, however, subject to the requirements that, in deciding whether or not to lend a relevant object, and in determining the time for which, and the conditions subject to which, a relevant object is to be lent, the board⁵:

- 69 (1) must give special consideration to a request for the loan of a relevant object for public exhibition⁶; and
- 70 (2) subject to that, must have regard to the interests of students and other persons⁷ visiting the board's collection, the suitability of the prospective borrower, the purpose of the loan, the physical condition and degree of rarity of the relevant object, and any risks to which it is likely to be exposed⁸.

Where the property in a relevant object has become vested in the board subject to a trust or condition, this power to lend may be exercised in a manner inconsistent with the trust or condition if either:

- 71 (a) 50 years have elapsed since the date on which the property became so vested in the board or in any person through whom the board derives title to the relevant object⁹; or
- 72 (b) the person who first imposed the trust or condition has, or his personal representatives¹⁰ have, consented in writing¹¹ to the exercise of the power in that manner¹².

The National Gallery Board, the Tate Gallery Board and the National Portrait Gallery Board may accept loans of relevant objects for the purpose (depending on the terms of the loan) of exhibiting them, or of study or research by the board or by persons seeking to inspect them¹³. Those boards are specified transferors and transferees for the purposes of the general powers of transfer between collections¹⁴ and the statutory provision for vesting of gifts to the nation where the donor has not specified a destination¹⁵.

1 As to the National Gallery Board, the Tate Gallery Board and the National Portrait Gallery Board see PARA 836.

2 As to the meaning of 'relevant object' see PARA 842 note 2: definition applied by the Museums and Galleries Act 1992 s 5(5).

3 As to the meaning of 'United Kingdom' see PARA 804 note 2.

4 Museums and Galleries Act 1992 s 5(1). As to the government indemnity scheme in relation to loans see PARA 1090. As to the return of cultural objects unlawfully removed from member states see PARA 1095 et seq. As to loans overseas see PARAS 1091, 1092.

5 See the Museums and Galleries Act 1992 s 5(1), (2).

- 6 Museums and Galleries Act 1992 s 5(2)(a).
- 7 As to the meaning of 'person' see PARA 803 note 16.
- 8 Museums and Galleries Act 1992 s 5(2)(b).
- 9 Museums and Galleries Act 1992 s 5(3)(a).
- 10 As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.
- 11 As to the meaning of 'writing' see PARA 805 note 14.
- 12 Museums and Galleries Act 1992 s 5(3)(b).
- 13 Museums and Galleries Act 1992 s 5(4).
- 14 See the Museums and Galleries Act 1992 s 6; and PARA 820.
- 15 See the Museums and Galleries Act 1992 s 7; and PARA 821.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/C. THE IMPERIAL WAR MUSEUM/844. Board of Trustees.

C. THE IMPERIAL WAR MUSEUM

844. Board of Trustees.

The Imperial War Museum was established by statute in 1920¹. For the purpose of managing the museum, and for the other purposes of the Imperial War Museum Act 1920, a board of trustees is established, which is a body corporate² (by the name of the 'Trustees of the Imperial War Museum') with perpetual succession and a common seal³. The powers of the board may be exercised notwithstanding any vacancy in its number⁴.

The board may make rules, with the consent of the Secretary of State⁵, for regulating its proceedings, and the constitution of, and delegation to, committees⁶. The seal of the board must be authenticated in the prescribed manner and any document purporting to be sealed with the seal so authenticated is receivable in evidence of the particulars so stated in that document⁷.

1 See the Imperial War Museum Act 1920. The Acts regulating the Imperial War Museum are the Imperial War Museum Act 1920 and the Imperial War Museum Act 1955. The two Acts may be cited together as the Imperial War Museum Acts 1920 and 1955: Imperial War Museum Act 1955 s 3. 'Imperial War Museum' means the institution established in 1917 under the name of the 'National War Museum' and known on the passing of the Imperial War Museum Act 1920 as the Imperial War Museum, and includes all collections, galleries and museums, wherever situated, which from time to time form or are administered as part of the Imperial War Museum: s 6(2).

2 As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 2; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1101 et seq.

3 See the Imperial War Museum Act 1920 s 1(1) (amended by the Charities Act 1960 s 48(2), Sch 7 Pt II). As to the constitution of the board and tenure of office of the trustees see the Imperial War Museum Act 1920 s 1(2), Schedule paras 1-5, 7 (Schedule para 1 amended by SI 1986/2239; SI 1988/253; the Pakistan Act 1990 s 1, Schedule para 2; the South Africa Act 1995 s 1, Schedule para 2(1); SI 1997/1744). Her Majesty may from time to time by Order in Council make further provision with respect to the membership of the board: see the Imperial War Museum Act 1955 s 1(2). A draft of any such Order in Council must be laid before each House of Parliament: s 1(3). The orders made are referred to above in relation to the Imperial War Museum Act 1920 Schedule para 1. As to Orders in Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 907. As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941. The Board of Trustees, so far as it is a charity, and any institution which is administered by or on its behalf and established for general or special purposes, is an exempt charity for the purposes of the Charities Act 1993: see ss 3, 96(1), Sch 2; and **CHARITIES** vol 8 (2010) PARA 315.

4 Imperial War Museum Act 1920 Schedule para 6.

5 As to the Secretary of State see PARA 802 note 2.

6 See the Imperial War Museum Act 1920 Schedule para 8 (amended by SI 1992/1311).

7 See the Imperial War Museum Act 1920 s 1(3). As to the corporate seal see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1122 et seq. Certain records of the Imperial War Museum are public records for the purposes of the Public Records Act 1958: see s 10, Sch 1 para 3, Table Pt II; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 835.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/C. THE IMPERIAL WAR MUSEUM/845. Director General and staff.

845. Director General and staff.

There is a director general of the Imperial War Museum¹ and a curator of the Imperial War Museum who are appointed by the Board of Trustees² with the approval of the Prime Minister³, and who hold office on such terms and conditions as the board may determine subject to such conditions as the Secretary of State⁴ may impose with the consent of the Treasury⁵. Subject to the board's directions, the director general is responsible generally for the museum's management, and the curator is charged with the care of the museum and the objects collected there subject to the director general's control and direction⁶. The director general, curator and any officers of the board⁷ are to be paid such salaries or remuneration as the board may determine, subject to such conditions as the Secretary of State may impose with the consent of the Treasury⁸.

1 As to the meaning of 'Imperial War Museum' see PARA 844 note 1.

2 As to the board see PARA 844.

3 As to the Prime Minister see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 394-398.

4 As to the Secretary of State see PARA 802 note 2.

5 Imperial War Museum Act 1920 s 4(1) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 7(4); SI 1992/1311). As to the meaning of 'Treasury' see PARA 809 note 4.

6 See the Imperial War Museum Act 1920 s 4(2). The curator acts as secretary to the board: s 4(3).

7 As to the board's power to appoint officers see PARA 846.

8 See the Imperial War Museum Act 1920 s 4(4) (amended by the Museums and Galleries Act 1992 Sch 8 para 7(5); SI 1992/1311).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/C. THE IMPERIAL WAR MUSEUM/846. General powers and duties of the Board of Trustees.

846. General powers and duties of the Board of Trustees.

The Board of Trustees¹ of the Imperial War Museum² has the general management and control of the museum and for that purpose may make such rules as it thinks necessary for securing the due administration of the museum and preserving the objects in it, including rules requiring payment to be made for admission³. Subject to the consent of the Treasury⁴, the board may appoint officers on such terms and subject to such conditions as it thinks fit⁵; and subject to the provisions of the Imperial War Museum Act 1920, it may do such other things as appear to it necessary or expedient for furthering the interests and increasing the utility of the museum⁶.

With the consent of the Secretary of State⁷, the board may apply any money received by it on the exchange, sale or disposal of any objects⁸ or on the sale or other disposition of any land, or by way of payment for admission to the museum, or by way of gift or grant or otherwise, in the purchase of any object which the board thinks it desirable to acquire for the museum, or otherwise in defraying the expenses of the board⁹.

1 As to the board see PARA 844.

2 As to the meaning of 'Imperial War Museum' see PARA 844 note 1.

3 Imperial War Museum Act 1920 s 2(1)(a) (s 2(1) renumbered as such by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 7(2)).

4 As to the meaning of 'Treasury' see PARA 809 note 4.

5 Imperial War Museum Act 1920 s 2(1)(f) (s 2(1) as renumbered: see note 3). As to the payment of salaries or remuneration to such officers see PARA 845.

6 Imperial War Museum Act 1920 s 2(1)(g) (s 2(1) as renumbered: see note 3).

7 As to the Secretary of State see PARA 802 note 2.

8 As to the disposal of objects see PARA 849.

9 Imperial War Museum Act 1920 s 2(1)(d) (s 2(1) as renumbered (see note 3); s 2(1)(d) amended by the Museums and Galleries Act 1992 Sch 8 para 7(1); SI 1992/1311).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/C. THE IMPERIAL WAR MUSEUM/847. Power to form companies.

847. Power to form companies.

With the consent of the Secretary of State¹, and subject to any conditions he may impose, the Board of Trustees² of the Imperial War Museum³ may form, or take part in forming, one or more bodies corporate which, or each of which, has as its main object or objects one or more of the following⁴:

- 73 (1) the production and publication of books, films or other informative material relating to the museum's collection or theme⁵;
- 74 (2) the production of replicas or reproductions of objects relating to the museum's collection or theme, or of souvenirs⁶;
- 75 (3) the sale (whether or not at an hour when the collection is open to the public for viewing) of informative material relating to the museum's collection or theme, or of souvenirs or other goods⁷;
- 76 (4) the provision (whether or not at such an hour) of catering or car parking or other services or facilities for the public at any premises occupied or managed by the board⁸; and
- 77 (5) any other object or objects incidental to the board's functions⁹.

The board may hold interests in any such body, exercise rights conferred by the holding of interests in it, and provide financial or other assistance to or in respect of it, including assistance by way of guarantee of its obligations¹⁰.

These provisions are without prejudice to any other statutory power of the board¹¹ to undertake anything mentioned in heads (1) to (5) above¹².

1 As to the Secretary of State see PARA 802 note 2.

2 As to the board see PARA 844.

3 As to the meaning of 'Imperial War Museum' see PARA 844 note 1.

4 Imperial War Museum Act 1920 s 2A(1) (s 2A added by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 7(3); Imperial War Museum Act 1920 s 2A(1) amended by SI 1992/1311).

5 Imperial War Museum Act 1920 s 2A(2)(a) (as added: see note 4).

6 Imperial War Museum Act 1920 s 2A(2)(b) (as added: see note 4).

7 Imperial War Museum Act 1920 s 2A(2)(c) (as added: see note 4).

8 Imperial War Museum Act 1920 s 2A(2)(d) (as added: see note 4).

9 Imperial War Museum Act 1920 s 2A(2)(e) (as added: see note 4). As to the board's functions see PARA 844.

10 Imperial War Museum Act 1920 s 2A(3) (as added: see note 4).

11 Ie by virtue of the Imperial War Museum Act 1920 s 2: see PARAS 846, 848, 849.

12 Imperial War Museum Act 1920 s 2A(4) (as added: see note 4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/C. THE IMPERIAL WAR MUSEUM/848. Power to hold land.

848. Power to hold land.

The Board of Trustees¹ of the Imperial War Museum² has power, with the consent of the Secretary of State³, to acquire land for the purposes of the museum and to sell or make other dispositions of any land vested in it which is not required for that purpose⁴. The Secretary of State may transfer land to the board⁵.

The board may allow premises occupied or managed by it to be used by other persons⁶ (for payment or otherwise) for purposes not connected with the board's functions, if the board is satisfied that to do so would not unduly conflict with those functions⁷.

1 As to the board see PARA 844.

2 As to the meaning of 'Imperial War Museum' see PARA 844 note 1.

3 As to the Secretary of State see PARA 802 note 2.

4 Imperial War Museum Act 1920 s 2(1)(b) (s 2(1) renumbered as such by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 7(2); Imperial War Museum Act 1920 s 2(1)(b) amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 7(1)(a), SI 1992/1311). As to the application of the proceeds of sale see PARA 846.

5 See the Museums and Galleries Act 1992 s 8, Sch 6; and PARA 822.

6 As to the meaning of 'person' see PARA 803 note 16.

7 Imperial War Museum Act 1920 s 2(2) (added by the Museums and Galleries Act 1992 Sch 8 para 7(2)). As to the board's functions see PARA 844.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/C. THE IMPERIAL WAR MUSEUM/849. Vesting, lending and disposal of objects.

849. Vesting, lending and disposal of objects.

All objects given, bequeathed or otherwise acquired for the purposes of the Imperial War Museum¹ at the time of the establishment of the Board of Trustees² were vested in the board for the museum's purposes³; and all objects which are at any subsequent time expressly given or bequeathed to the public, or to the nation, or to the board for the purposes of the museum, or given or bequeathed by words showing an intention that the gifts should inure to or for the benefit of the museum, or which are acquired by purchase or otherwise for the purposes of the museum, vest in the board and are held by it for the museum's purposes⁴.

The board may lend any objects belonging to the museum for public exhibition in the United Kingdom or elsewhere⁵, or to any government department or other authority or institution in the United Kingdom or elsewhere⁶. The board must give special consideration to any application for a loan for public exhibition⁷, or for display in any permanent headquarters or other establishment belonging to the armed forces of the Crown⁸. A loan may be made on such terms and subject to such conditions as the board may think fit⁹. In the case of an object which has been given or bequeathed to the museum, these powers to lend are not, however, exercisable: (1) until 15 years after the date of the gift or bequest, unless the donor or his personal representatives, or the personal representatives of the testator, as the case may be, have consented to the exercise of the powers¹⁰; or (2) in any manner inconsistent with any condition attached to the gift or bequest unless either 25 years have elapsed since the date of the gift or bequest, or the donor or his personal representatives, or the personal representatives of the testator, as the case may be, have consented to the exercise of the board's powers in that manner¹¹.

The board may exchange, sell or otherwise dispose of any duplicate objects belonging to the museum, and with the consent of the Secretary of State¹² may exchange, sell or otherwise dispose of any objects belonging to the museum which the board considers unfit to be preserved or not required for its purposes¹³.

The Secretary of State or the board may lend, at any time and on such terms and subject to such conditions as they think fit, any pictures or other objects vested in them to the museum¹⁴. The board is a specified transferor and transferee for the purposes of the general powers of transfer between collections¹⁵ and the statutory provision for vesting of gifts to the nation where the donor has not specified a destination¹⁶.

In certain circumstances the board may transfer an object from its collections under the Holocaust (Return of Cultural Objects) Act 2009¹⁷.

1 As to the meaning of 'Imperial War Museum' see PARA 844 note 1.

2 The board was established on 2 July 1920 being the day on which the Imperial War Museum Act 1920 received royal assent. As to the board see PARA 844.

3 See the Imperial War Museum Act 1920 s 3(1).

4 See the Imperial War Museum Act 1920 s 3(1).

5 Imperial War Museum Act 1955 s 2(1)(a) (s 2(1) amended by the Museums and Galleries Act 1992 s 11(2), (3), Sch 8 para 9(1), Sch 9). As to the meaning of 'United Kingdom' see PARA 804 note 2.

6 Imperial War Museum Act 1955 s 2(1)(b) (s 2(1) as amended: see note 5).

- 7 Imperial War Museum Act 1955 s 2(2)(a).
- 8 Imperial War Museum Act 1955 s 2(2)(b).
- 9 Imperial War Museum Act 1955 s 2(3) (amended by the Museums and Galleries Act 1992 Sch 8 para 9(2), Sch 9).
- 10 Imperial War Museum Act 1955 s 2(4)(a). As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.
- 11 Imperial War Museum Act 1955 s 2(4)(b). As to loans overseas see PARAS 1091, 1092.
- 12 As to the Secretary of State see PARA 802 note 2.
- 13 Imperial War Museum Act 1920 s 2(1)(c) (s 2(1) renumbered as such by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 7(2); Imperial War Museum Act 1920 s 2(1)(c) amended by SI 1992/1311).
- 14 Imperial War Museum Act 1920 s 3(2) (amended by the National Gallery and Tate Gallery Act 1954 s 8(2), Sch 2; the Museums and Galleries Act 1992 s 11(3), Sch 9; SI 1992/1311).
- 15 See the Museums and Galleries Act 1992 s 6, Sch 5; and PARA 820.
- 16 See the Museums and Galleries Act 1992 s 7: and PARA 821.
- 17 See PARA 1103.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/D. THE NATIONAL MARITIME MUSEUM/850. Board of Trustees.

D. THE NATIONAL MARITIME MUSEUM

850. Board of Trustees.

The National Maritime Museum at Greenwich was established in 1934¹. A Board of Trustees is established for the purpose of managing the museum². The board is a body corporate with perpetual succession and a common seal³. The powers of the board may be exercised notwithstanding any vacancy in its number⁴. The board may make rules for regulating its proceedings⁵.

The site of the museum is vested in the board⁶. The board:

- 78 (1) may make such alterations as may be necessary to adapt any buildings on that land for use for the purposes of the museum⁷;
- 79 (2) may for those purposes reconstruct any such buildings or demolish any such buildings and construct new buildings⁸; and
- 80 (3) must at all times maintain any buildings on that land in a proper condition for the purposes of the museum⁹.

If at any time the Secretary of State by order made by statutory instrument declares that the buildings on the land have ceased to be used for the purposes of the museum, the land will vest in the Minister of the Crown at that time entrusted with responsibility for defence and be held by him in trust for Her Majesty for the benefit of Greenwich Hospital¹⁰.

1 See the National Maritime Museum Act 1934 s 1(1) (amended by the National Maritime Museum Act 1989 s 3(2)).

2 See the National Maritime Museum Act 1934 s 2(1). As to the constitution of the board see s 2(2), Sch 2 paras 1-3. The Board of Trustees, so far as it is a charity, and any institution which is administered by or on its behalf and established for general or special purposes, is an exempt charity for the purposes of the Charities Act 1993: see ss 3, 96(1), Sch 2; and **CHARITIES** vol 8 (2010) PARA 315.

3 See the National Maritime Museum Act 1934 s 2(1). As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 2; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1101 et seq. As to the corporate seal see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1122 et seq.

4 National Maritime Museum Act 1934 Sch 2 para 4.

5 See the National Maritime Museum Act 1934 Sch 2 para 5.

6 See the National Maritime Museum Act 1989 ss 1(1), (7), 3(3); National Maritime Museum Act 1989 (Commencement) Order 1989, SI 1989/1028. As to the land and buildings comprised in the museum see the National Maritime Museum Act 1934 Sch 1. Additionally, the Secretary of State may transfer land to the museum: see the Museums and Galleries Act 1992 s 8, Sch 6; and PARA 822. The vesting of the site in the board does not affect the application to that land of the Parks Regulation Acts 1872 to 1974 (ie the Parks Regulation Act 1872, the Parks Regulation (Amendment) Act 1926 and the Parks Regulation (Amendment) Act 1974: see s 1(2)); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 561-563: see the National Maritime Museum Act 1989 s 1(2). As to the Secretary of State see PARA 802 note 2.

7 National Maritime Museum Act 1989 s 1(3)(a). However, nothing in s 1(3):

1 (1) authorises the demolition of the ancient monument consisting of the Queen's House and the colonnades on the east and west sides of it (see s 1(3));

- 2 (2) exempts the board from the provisions of the Town and Country Planning Act 1990, the Ancient Monuments and Archaeological Areas Act 1979 (see PARA 1002) or any other enactment relating to the preservation of buildings or the execution of building work (see the National Maritime Museum Act 1989 s 1(4) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 80)). As to the meaning of 'enactment' see PARA 805 note 5.
- 8 National Maritime Museum Act 1989 s 1(3)(b). See also note 7.
- 9 National Maritime Museum Act 1989 s 1(3)(c). See also note 7.
- 10 National Maritime Museum Act 1989 s 1(5) (amended by SI 1992/1311).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/D. THE NATIONAL MARITIME MUSEUM/851. Staff.

851. Staff.

There is a director of the National Maritime Museum, appointed by the Board of Trustees¹ with the approval of the Prime Minister², who holds office on such terms and conditions as the board determines, subject to such conditions as the Secretary of State³ may impose with the consent of the Treasury⁴. Subject to the board's control and direction, the director is charged with the care of the museum and of the objects collected there⁵.

The board may appoint such officers and servants as it thinks fit, and there must be paid to the director of the museum and to any officers so appointed such salaries or remuneration as the board may determine subject to such conditions as the Secretary of State imposes with the consent of the Treasury⁶.

1 As to the National Maritime Museum and the board see PARA 850.

2 As to the Prime Minister see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 394-398.

3 As to the Secretary of State see PARA 802 note 2.

4 National Maritime Museum Act 1934 s 5(1) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 8(1); SI 1992/1311). As to the meaning of 'Treasury' see PARA 809 note 4.

5 See the National Maritime Museum Act 1934 s 5(1) (as amended: see note 4).

6 National Maritime Museum Act 1934 s 5(2) (amended by the Museums and Galleries Act 1992 s 11(3), Sch 8 para 8(2), Sch 9; and SI 1992/1311).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/D. THE NATIONAL MARITIME MUSEUM/852. General powers of the Board of Trustees.

852. General powers of the Board of Trustees.

The Board of Trustees of the National Maritime Museum¹ has the general management and control of the museum² and for that purpose may make such regulations as it thinks necessary for securing the due administration of the museum and preserving the objects collected in it, including regulations requiring payment to be made for admission to the museum³.

The board may expend any money available for the purpose⁴ in the purchase of any object which in the board's opinion it is desirable to acquire for the museum⁵. Money received by the board on the sale, exchange or disposal of objects⁶ or by way of gift or bequest may be invested and with the interest may be used for the purchase of objects or otherwise for the museum's purposes in the discretion of the board⁷. The board may, in exercising its functions, enter into contracts and other agreements, including those for their occupation or management of land⁸, and acquire or dispose of land and other property⁹; but it may not acquire and dispose of land without the consent of the Secretary of State¹⁰. If the board is satisfied that to do so would not conflict unduly with its functions¹¹, it may allow premises owned, occupied or managed by it to be used by other persons¹², for payment or otherwise, for purposes not connected with those functions¹³.

Subject to the provisions of the National Maritime Museum Act 1934, the board may do such other things as appear to it necessary or expedient for furthering the interests and increasing the utility of the museum¹⁴.

1 As to the National Maritime Museum and the board see PARA 850.

2 National Maritime Museum Act 1934 s 2(3).

3 National Maritime Museum Act 1934 s 2(3)(a). As to the appointment of a director general and officers see s 5; and PARA 851.

4 The money referred to is money available in accordance with the provisions of the National Maritime Museum Act 1934: see s 2(3)(c).

5 National Maritime Museum Act 1934 s 2(3)(c).

6 As to the disposal of objects see PARA 853.

7 National Maritime Museum Act 1934 s 6(2) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 8(3)(b)). No money received by the board by way of gift or bequest may, however, be spent in any way inconsistent with any condition attached to the gift or bequest: National Maritime Museum Act 1934 s 6(2) proviso.

8 National Maritime Museum Act 1989 s 2(1)(a). Section 2(1) is without prejudice to the board's powers under the National Maritime Museum Act 1934 and the National Maritime Museum Act 1989 s 1 (see PARA 850): see s 2(1), (4). As to the meaning of 'land' see PARA 804 note 30.

9 National Maritime Museum Act 1989 s 2(1)(b). See also note 8.

10 National Maritime Museum Act 1989 s 2(2) (amended by SI 1992/1311). As to the Secretary of State see PARA 802 note 2.

11 Ie its functions under the National Maritime Museum Act 1934 and the National Maritime Museum Act 1989 s 1 (see PARA 850): see s 2(3), (4).

12 As to the meaning of 'person' see PARA 803 note 16.

13 National Maritime Museum Act 1989 s 2(3).

14 National Maritime Museum Act 1934 s 2(3)(f).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/D. THE NATIONAL MARITIME MUSEUM/853. Vesting, lending and disposal of objects.

853. Vesting, lending and disposal of objects.

All objects which at the time of the establishment of the Board of Trustees of the National Maritime Museum¹ formed part of the Naval Museum of the Royal Naval College at Greenwich², or were in the possession of certain specified trusts³, are vested in the board for the museum's purposes⁴, as are all objects which (1) are expressly given or bequeathed to the public or to the nation or to the board for the museum's purpose⁵; (2) are given or bequeathed by words showing an intention that the gifts should inure to, or for the benefit of, the museum⁶; or (3) are acquired by purchase or otherwise for the purposes of the museum⁷.

Specific power is given to any government department or to the trustees or other persons⁸ having the management of any gallery, museum or other institution in Great Britain⁹ in receipt of money provided by Parliament, with the consent of the Secretary of State¹⁰, to transfer or lend any objects under their control or management to the board on such terms and subject to such conditions as may be agreed, where it is considered that such objects would more properly form part of the collection in the National Maritime Museum¹¹. The board has an equivalent power, subject to the Secretary of State's consent, to lend to such persons any objects vested in the board for the purposes of the museum which, in the board's opinion, would more properly be under the control or management of those persons¹².

The museum's trustees are specified transferors and transferees for the purposes of the general powers of transfer between collections¹³ and the statutory provision for vesting of gifts to the nation where the donor has not specified a destination¹⁴.

The board may lend any objects vested in it for the purposes of the museum to any gallery, museum or exhibition approved by the Secretary of State, on such terms and conditions as the board thinks fit¹⁵. The board may exchange, sell or otherwise dispose of any duplicate objects vested in it for the purposes of the museum, and may with the consent of the Secretary of State exchange, sell or otherwise dispose of any objects so vested which the board considers are not required for the museum's purposes¹⁶. These powers¹⁷ of selling or otherwise disposing of, or of lending or transferring, any object must not, however, be exercised in any manner inconsistent with any condition attached to any gift or bequest by virtue or in consequence of which that object was vested in the board for the purposes of the museum¹⁸.

In certain circumstances the board may transfer an object from its collections under the Holocaust (Return of Cultural Objects) Act 2009¹⁹.

1 The board was established on 25 July 1934 being the day on which the National Maritime Museum Act 1934 received royal assent. As to the National Maritime Museum and the board see PARA 850.

2 See the National Maritime Museum Act 1934 s 3(a).

3 See the National Maritime Museum Act 1934 s 3(b). As to the specified trusts see Sch 3.

4 See the National Maritime Museum Act 1934 s 3.

5 See the National Maritime Museum Act 1934 s 3(c).

6 See the National Maritime Museum Act 1934 s 3(d).

7 See the National Maritime Museum Act 1934 s 3(e).

- 8 As to the meaning of 'person' see PARA 803 note 16.
- 9 As to the meaning of 'Great Britain' see PARA 804 note 2.
- 10 As to the Secretary of State see PARA 802 note 2.
- 11 See the National Maritime Museum Act 1934 s 4 (amended by SI 1992/1311). This power to transfer or lend must not be exercised in any manner inconsistent with any condition attached to the gift or bequest of the objects transferred or lent: National Maritime Museum Act 1934 s 4 proviso.
- 12 See the National Maritime Museum Act 1934 s 2(3)(e) (amended by SI 1992/1311). This power is subject to the National Maritime Museum Act 1934 s 2(3) proviso: see the text to notes 17-18.
- 13 See the Museums and Galleries Act 1992 s 6, Sch 5; and PARA 820.
- 14 See the Museums and Galleries Act 1992 s 7; and PARA 821.
- 15 National Maritime Museum Act 1934 s 2(3)(d) (amended by SI 1992/1311).
- 16 National Maritime Museum Act 1934 s 2(3)(b) (amended by SI 1992/1311).
- 17 Re the powers under the National Maritime Museum Act 1934 s 2(3): see the text to notes 12, 15-16.
- 18 National Maritime Museum Act 1934 s 2(3) proviso.
- 19 See PARA 1103.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/E. THE WELLINGTON MUSEUM/854. Establishment.

E. THE WELLINGTON MUSEUM

854. Establishment.

The Wellington Museum was established in 1947 by the transfer of Apsley House to the then Minister of Works¹; and by the transfer to the then Minister of Education², under an agreement made between him and the seventh Duke of Wellington, of certain chattels held as heirlooms, together with other chattels formerly belonging to the first Duke of Wellington which had become the property of the seventh Duke of Wellington³.

1 See the Wellington Museum Act 1947 s 1(1) (as originally enacted). The functions of the Minister of Public Buildings and Works have been transferred to the Secretary of State: s 1(1) (amended by SI 1970/1681). As to the Secretary of State see PARA 802 note 2.

2 The functions of the Minister of Education have been transferred to the Secretary of State: see the Wellington Museum Act 1947 s 1(2) (amended by SI 1992/1311).

3 See the Wellington Museum Act 1947 s 1(2) (as originally enacted).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/E. THE WELLINGTON MUSEUM/855. Use of Apsley House as a museum.

855. Use of Apsley House as a museum.

Certain portions of Apsley House¹ are, subject to rights reserved to the Secretary of State², to be maintained and used as a museum for the preservation and exhibition to the public of the chattels now vested³ in the Secretary of State and such other chattels as the seventh Duke of Wellington or any other person⁴ may think fit from time to time to permit to be exhibited in it, being chattels associated with the first Duke of Wellington or his times, which in the opinion of the Secretary of State should be exhibited⁵. The Secretary of State has power temporarily to remove from, or from exhibition in, the museum any of the chattels which for any reason it appears to him desirable ought not for the time being to be kept, or kept and exhibited, in it⁶. The museum portions of Apsley House may also be used for the purpose of any entertainment given on the government's behalf⁷ or, with the consent of the Duke of Wellington, for any other purpose not inconsistent with the continued use of it as the Wellington Museum⁸.

1 Ie those portions specified in the Wellington Museum Act 1947 s 2(1), Sch 2 Pt I: s 2(1). Rights of occupation in respect of the remainder of Apsley House are reserved to the Duke of Wellington for the time being and his successors: see s 3(1), Sch 2 Pt II. Those rights include a right of access to the portions which he is entitled to occupy by specified routes (see s 3(2), Sch 2 Pt II); and a right to occupy the garden, but not to assign, let or part with possession of the whole or any part of it (s 3(4)). On the extinction of the Dukedom, the portions of the house not used as a museum, and the garden, may be used or dealt with in such manner as the Secretary of State thinks fit: s 3(6) (amended by SI 1970/1681). As to the Secretary of State see PARA 802 note 2. The Inheritance Tax Act 1984 does not apply to the rights conferred by the Wellington Museum Act 1947 s 3: see the Inheritance Tax Act 1984 s 156(a); and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 615.

2 The Secretary of State has a power to discontinue the use of Apsley House as a museum if owing to fire or any cause beyond his control it is destroyed or so damaged that in his opinion it could not be restored so as to preserve its association with the first Duke of Wellington: see the Wellington Museum Act 1947 s 6(1) (s 6(1) amended by SI 1970/1681). Notice in writing must be given to the Duke of Wellington for the time being of any such decision, he must be given reasonable compensation and Apsley House and the site, forecourt and garden may either be used for such public purposes as the Secretary of State thinks fit or may be sold or otherwise disposed of: see the Wellington Museum Act 1947 s 6(1)(a)-(c) (as so amended). As to the meaning of 'writing' see PARA 805 note 14. No compensation is payable to the then Duke of Wellington if the destruction or damage is due to his negligence or that of his servants or agents: s 6(1) proviso. Any fire originating in the portions of Apsley House which the Duke of Wellington for the time being is entitled to occupy is presumed to be due to his negligence or that of his servants or agents unless the contrary is proved: s 6(3).

The Secretary of State also has power to redesignate the portions of the house used as a museum, by varying the provisions of Sch 2 by order made with the consent of the Duke of Wellington: see s 7(1) (s 7 amended by SI 1970/1681). Before making any such order, he must lay a draft of the order before each House of Parliament and the order may not be made until the expiration of a period of 40 days beginning with the day on which a copy of the draft is laid before each House or, if such copies are laid on different days, with the later of the two days, and if within that period either House resolves that the order be not made, no further proceedings may be taken on it, but without prejudice to the laying before Parliament of a new draft: s 7(2) (as so amended). In reckoning any such period of 40 days, no account may be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: s 7(2).

3 Ie by virtue of the Wellington Museum Act 1947.

4 As to the meaning of 'person' see PARA 803 note 16.

5 Wellington Museum Act 1947 s 2(1) (amended by SI 1992/1311).

6 Wellington Museum Act 1947 s 2(1) proviso (amended by SI 1992/1311).

7 Wellington Museum Act 1947 s 2(2)(a).

8 Wellington Museum Act 1947 s 2(2)(b).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/E. THE WELLINGTON MUSEUM/856. Maintenance of Apsley House.

856. Maintenance of Apsley House.

The general responsibility for maintaining Apsley House¹ lies with the Secretary of State², subject to a duty placed on the Duke of Wellington for the time being to keep the portions of the house which he is entitled to occupy³ in good and tenantable repair and to maintain the garden⁴. If any of the Dukes of Wellington fails to comply with the obligation so imposed on him, the Secretary of State, on giving reasonable notice of his intention to do so, may himself do such repairs to the portions of Apsley House which the Duke is entitled to occupy, and do such work on the garden, as appear to him to be necessary; and any expenses reasonably incurred by the Secretary of State in so doing are recoverable by him from the Duke⁵.

If, owing to fire or any other cause, Apsley House is damaged or any of the contents of it which are the property of the Crown, other than chattels which are being or have been or are to be exhibited in the museum, are damaged or destroyed, and the damage or destruction is due to the negligence of the Duke of Wellington for the time being or his servants or agents⁶, then if no notice discontinuing the use of the house as a museum is given⁷, the Duke must repay to the Secretary of State such expenses as may be reasonably incurred by him in making good the damage or in replacing any of the contents which are destroyed⁸.

1 As to Apsley House see PARA 855.

2 It is the duty of the Secretary of State to maintain the forecourt of Apsley House in a proper condition, to maintain the whole of the fabric of the exterior of the house in a proper state of repair and to carry out and maintain such works as are necessary for separating the portions of Apsley House to be used as a museum from the remainder of the house and adapting those portions to that use: see the Wellington Museum Act 1947 s 5(1) (amended by SI 1970/1681). As to the Secretary of State see PARA 802 note 2.

3 As to the right of the Duke of Wellington to occupy part of the property see PARA 855. The right of occupation includes a right to carry out such internal alterations, renewals, repairs and decorations in the portions of the house which the Duke is entitled to occupy as he may think fit; but nothing may be done which affects the fabric of the house except with the consent of the Secretary of State: Wellington Museum Act 1947 s 3(1) (amended by SI 1970/1681). The Secretary of State and the Duke of Wellington or any of his successors may enter into and carry out agreements with respect to the heating and lighting of the house: see the Wellington Museum Act 1947 s 5(5) (amended by SI 1970/1681).

4 See the Wellington Museum Act 1947 ss 3(4), 5(2).

5 See the Wellington Museum Act 1947 s 5(3) (s 5(3), (4) amended by SI 1970/1681). There is a power of entry and inspection for this purpose: see the Wellington Museum Act 1947 s 5(4) (as so amended). As to the responsibility for rates and taxes see s 4 (amended by the Finance Act 1982 s 157, Sch 22 Pt XI).

6 As to the burden of proof see the Wellington Museum Act 1947 s 6(3); and PARA 855 note 2.

7 Ie notice under the Wellington Museum Act 1947 s 6(1): see PARA 855.

8 Wellington Museum Act 1947 s 6(2) (amended by SI 1970/1681).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/F. THE MUSEUM OF LONDON/857. Establishment of the Museum of London.

F. THE MUSEUM OF LONDON

857. Establishment of the Museum of London.

The Museum of London was established by the Museum of London Act 1965¹. There is a Board of Governors of the Museum of London² which is a body corporate with perpetual succession and a common seal³. The board may determine its own quorum and procedure⁴. The board may act notwithstanding a vacancy amongst the governors, and no act of the board must be deemed to be invalid by reason only of a defect in the appointment of any of the governors⁵. The application of the seal of the board must be authenticated by the signatures of the chairman of the board or some other governors authorised by the board to authenticate the application or the seal and of the secretary or some other person authorised by the board to act in his stead in that behalf⁶.

1 See the Museum of London Act 1965 s 2. The Museum of London Act 1965 s 2 made provision for the transfer to the Board of Governors of the Museum of London of the collections of the London and Guildhall Museums (see s 2(1) (amended by SI 1992/1311)) and the benefit of certain funds (see the Museum of London Act 1965 s 2(2)) and the transfer of functions from the London Museum Trustees and the Corporation of the City of London to the board (see s 2(3)). See also s 12.

2 See the Museum of London Act 1965 s 1(1). As to the constitution of the board see s 1(2) (amended by the Museum of London Act 1986 s 1(1); Greater London Authority Act 2007 s 45(1)). As to tenure of office of governors and the appointment of a chairman see the Museum of London Act 1965 Schedule paras 2-6 (paras 2-4 amended by the Local Government Act 1985 s 102, Sch 17; Museum of London Act 1965 Schedule para 2 further amended by the Greater London Authority Act 2007 s 46(1); Museum of London Act 1965 Schedule para 4 further amended by the Local Government Act 1985 s 43(5), Greater London Authority Act 2007 s 45(2)).

3 See the Museum of London Act 1965 Schedule para 1. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 2; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1101 et seq. As to the corporate seal see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1122 et seq. So far as it is a charity, the board is an exempt charity within the meaning of the Charities Act 1993: ss 3, 96(1), Sch 2; and **CHARITIES** vol 8 (2010) PARA 315.

4 See the Museum of London Act 1965 Schedule para 7. This provision is expressed to be subject to the provisions of the Schedule paras 1-6: see note 2, the text to note 3.

5 Museum of London Act 1965 Schedule para 8.

6 Museum of London Act 1965 Schedule para 9.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/F. THE MUSEUM OF LONDON/858. Director and staff.

858. Director and staff.

There is a director of the Museum of London who is appointed by the Board of Governors¹ with the approval of the Greater London Authority² and the Corporation of the City of London³. The director holds office on such terms and subject to such conditions as the Greater London Authority and the corporation may jointly direct, and is responsible to the board for the care of all property in its possession and for the general administration of the collections vested in it and any place where those collections are kept and for the administration of any services provided by the board in the exercise of its functions⁴.

With the corporation's consent the board must, from among the corporation's officers, appoint persons who must, while remaining corporation officers, act as the board's secretary and treasurer⁵.

Subject to the consent of the Greater London Authority and the corporation as to numbers, and without prejudice to the provisions above relating to the secretary and the treasurer, the board may appoint such officers and such servants as it thinks fit; and any officer and any servant so appointed holds office on such terms and subject to such conditions as the corporation may direct⁶. There are paid to the director and any officers and servants appointed under these provisions such salaries, allowances and other remuneration as the corporation, with the approval of the Greater London Authority, may determine⁷.

1 As to the Museum of London and the Board of Governors see PARA 857.

2 As to the Greater London Authority see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 34, 79 et seq.

3 See the Museum of London Act 1965 s 9(1) (amended by the Local Government Act 1985 s 43(3); SI 1992/1311; Greater London Authority Act 2007 s 48(2)). As to the Corporation of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 40 et seq.

4 Museum of London Act 1965 s 9(1) (as amended: see note 3; further amended by the Museum of London Act 1986 s 2(3)).

5 Museum of London Act 1965 s 9(2). The persons so appointed act on such terms and such conditions as may be agreed between the board and the corporation, except that no salaries, allowances or other remuneration may be paid to them by the board, but in respect of their service to the board, there are due to the corporation from the board such sums as the corporation and the board may agree: s 9(2).

6 Museum of London Act 1965 s 9(3) (amended by the Local Government Act 1985 s 43(3); SI 1992/1311; Greater London Authority Act 2007 s 48(2)).

7 Museum of London Act 1965 s 9(4) (amended by the Local Government Act 1985 s 102(2), Sch 17; SI 1992/1311; Greater London Authority Act 2007 s 48(2)). In making such a determination, the corporation must have regard to any recommendations that may be made by the board: Museum of London Act 1965 s 9(4). As to staff pensions see PARA 896.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/F. THE MUSEUM OF LONDON/859. General powers of the Board of Governors.

859. General powers of the Board of Governors.

The Board of Governors of the Museum of London¹ has a duty, so far as practicable, to care for, preserve and add to the objects in its collections²; to secure that those objects are exhibited to the public and made available to persons seeking to inspect them for study or research³; and generally to promote understanding and appreciation of historic and contemporary London⁴ and of its society and culture, both by means of its collections and by such other means as the board considers appropriate⁵. The board may⁶ do all such things as it thinks necessary or expedient for these purposes and its functions under the Museum of London Act 1965⁷. The board may also provide archaeological services, and undertake archaeological investigations and research in connection with land in London, and publish information concerning such activities and promote the provision of such services, the undertaking of such investigations and research and the publishing of such information⁸.

The board may acquire or dispose of any land or any estate or interest in land⁹; but the board must not acquire or dispose of any land or estate or interest in land without the consent of the Greater London Authority¹⁰ and the Corporation of the City of London¹¹.

1 As to the board see PARA 857.

2 Museum of London Act 1965 s 3(1)(a) (s 3 substituted by the Museum of London Act 1986 s 2(1)). As to the keeping of collections see PARA 860. As to the acquisition and disposal of objects see PARA 861.

3 Museum of London Act 1965 s 3(1)(b) (as substituted: see note 2).

4 For these purposes, 'London' includes Greater London and the surrounding region: Museum of London Act 1965 s 3(5) (as substituted: see note 2). 'Greater London' means the area comprising the areas of the London boroughs, the City and the Temples: see the London Government Act 1963 s 2(1); and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29.

5 Museum of London Act 1965 s 3(1)(c) (as substituted: see note 2).

6 Ie subject to the provisions of the Museum of London Act 1965.

7 Museum of London Act 1965 s 3(2) (as substituted: see note 2).

8 Museum of London Act 1965 s 3(3)(a) (as substituted: see note 2). As to the making of grants to the board for these purposes see the Museum of London Act 1986 s 4; and PARA 863.

9 Museum of London Act 1965 s 3(3)(b) (as substituted: see note 2).

10 As to the Greater London Authority see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 34, 79 et seq.

11 Museum of London Act 1965 s 3(4) (s 3 as substituted (see note 2); s 3(4) amended by SI 1992/1311, Greater London Authority Act 2007 s 48(1)). Such consent may be given subject to such conditions as the Greater London Authority and the corporation consider appropriate: s 3(4) (as so substituted and amended).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/F. THE MUSEUM OF LONDON/860. Keeping of collections.

860. Keeping of collections.

The Board of Governors of the Museum of London¹ must take steps to acquire premises for the purpose of maintaining its collections in them and holding exhibitions in them of its collections, or so much of them as from time to time it thinks fit, being premises situated within Greater London² and, so long as they are held by the board, to be known as the Museum of London³. The board must⁴, as soon as practicable after it has acquired the premises, keep the objects comprised in its collections in those premises, or, if those premises cease to be held by the board, in other premises within Greater London held by it⁵.

However, nothing in these provisions is be taken as precluding the board from exhibiting any of the objects comprised in the collections at any place, wherever situated, other than such premises as are mentioned above, or from removing any of those objects for any purpose, other than exhibition, connected with the administration of any such premises or the care of the board's collections⁶. Where it appears to the board that any objects comprised in its collections cannot conveniently be kept within any such premises as are mentioned above⁷ it may store those objects at such other premises, wherever situated, as appear to it to be suitable⁸.

The board may make such charges as it may determine for admission to its premises⁹. The board may use the premises known as the Museum of London for any educational or cultural purpose whether or not connected with the board's functions under the Museum of London Act 1965¹⁰; and may allow any premises occupied or managed by it to be used by other persons¹¹ for purposes not connected with such functions if it is satisfied that to do so would not conflict with those functions¹².

- 1 As to the Museum of London and the board see PARA 857.
- 2 As to the meaning of 'Greater London' see PARA 859 note 4.
- 3 Museum of London Act 1965 s 4(1) (amended by SI 2004/1939).
- 4 Ie subject to the provisions of the Museum of London Act 1965 ss 5-16.
- 5 Museum of London Act 1965 s 4(2) (amended by SI 2004/1939).
- 6 Museum of London Act 1965 s 4(3). As to the power to lend objects see PARA 862.
- 7 Ie as are mentioned in the Museum of London Act 1965 s 4(2): see the text to notes 4-5.
- 8 Museum of London Act 1965 s 4(4).
- 9 Museum of London Act 1965 s 4(5) (added by the City of London (Various Powers) Act 1979 s 18).
- 10 Museum of London Act 1965 s 8(1) (s 8 substituted by the Museum of London Act 1986 s 2(2)).
- 11 As to the meaning of 'person' see PARA 803 note 16.
- 12 Museum of London Act 1965 s 8(2) (as substituted: see note 10).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/F. THE MUSEUM OF LONDON/861. Power to acquire, dispose of and transfer objects.

861. Power to acquire, dispose of and transfer objects.

The Board of Governors of the Museum of London¹ may acquire any objects which in its opinion it is desirable to add to its collections². The board may sell, exchange, give away or otherwise dispose of any object vested in it and comprised in its collections if the object is a duplicate of another such object or is for any other reason not, in its opinion, required for retention in those collections³. These powers are only exercisable with the approval as respects that object of not less than two-thirds of the governors for the time being⁴. Where an object has become vested in the board subject to any trust or condition, the powers of disposal are not exercisable as respects that object in a manner inconsistent with that trust or condition⁵.

The board is a specified transferor and transferee for the purposes of the general powers of transfer between collections⁶; but the powers of transfer are not exercisable by the board as respects an object except with the approval of their exercise as respects that object of not less than two-thirds of the governors for the time being⁷. The board is also a specified body for the purposes of the statutory provisions for the vesting of gifts to the nation where the donor has not specified a destination⁸.

1 As to the Museum of London and the board see PARA 857.

2 Museum of London Act 1965 s 5(1). This power is subject to ss 6-16: see s 5(1). As to the keeping of collections see PARA 860. As to the power to lend objects see PARA 862.

3 Museum of London Act 1965 s 5(2). This power is subject to ss 6-16: see s 5(2).

4 See the Museum of London Act 1965 s 5(3).

5 Museum of London Act 1965 s 5(4).

6 See the Museums and Galleries Act 1992 s 6, Sch 5; and PARA 820.

7 Museum of London Act 1965 s 7(3) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 11(b)).

8 See the Museums and Galleries Act 1992 s 7; and PARA 821.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/F. THE MUSEUM OF LONDON/862. Power to lend objects.

862. Power to lend objects.

Any object vested in the Board of Governors of the Museum of London¹ may be lent by it on such terms and conditions as it thinks fit, to any person² for any purpose, whether the purpose is to be carried out in the United Kingdom³ or elsewhere⁴. In exercising the power to lend in the case of any object, the board must have regard to the interests of students and other persons visiting the collections vested in it, to the physical condition and degree of rarity of the object and to any risks to which the object is likely to be exposed⁵.

1 As to the Museum of London and the board see PARA 857.

2 As to the meaning of 'person' see PARA 803 note 16.

3 As to the meaning of 'United Kingdom' see PARA 804 note 2.

4 Museum of London Act 1965 s 6(1).

5 Museum of London Act 1965 s 6(2). As to the government indemnity scheme in respect of loans see PARA 1090. As to loans overseas see PARAS 1091, 1092.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/F. THE MUSEUM OF LONDON/863. Finance.

863. Finance.

The Historic Buildings and Monuments Commission for England ('English Heritage')¹ may make grants to the Board of Governors of the Museum of London², subject to such conditions as the commission may think fit to impose³, for the purpose of assisting the board:

- 81 (1) in providing archaeological services and undertaking archaeological investigations and research in connection with land in London⁴ and publishing information concerning such investigations and research⁵; or
- 82 (2) in promoting the provision of such services or the undertaking of such investigations and research or the publishing of such information by another person⁶ or body⁷.

From time to time the board must submit to the Greater London Authority⁸ and the Corporation of the City of London⁹ an estimate of the expenditure which, during the period to which the estimate relates, the board proposes to incur in carrying the Museum of London Act 1965 into effect, being expenditure which it proposes should be defrayed in accordance with the relevant statutory provisions¹⁰; and the estimate must specify the matters in respect of which it is proposed that the expenditure to which it relates should be incurred, and the amount proposed to be incurred in respect of those matters¹¹. Expenditure incurred in accordance with an estimate thus submitted must, if the estimate is approved by the authority and the corporation, be defrayed in the first instance by the corporation, but the corporation and the authority may make payments to the board in respect of such part of the expenditure incurred or to be incurred or in respect of such expenditure of a particular description, as the corporation or (as the case may be) the authority may determine, and in that event that part of such expenditure, or, as the case may be, such expenditure of that description, must be defrayed by the board itself instead of by the corporation¹².

The total of the payments made by the authority under the above provisions must equal the total expended by the corporation under those provisions¹³. However, in the case of particular amounts paid in respect of particular expenses, the corporation and the authority may agree that the proportion of expenditure paid for by the authority is other than one half¹⁴.

Money received by the board¹⁵ otherwise than:

- 83 (a) in accordance with estimates of expenditure approved by the Greater London Authority and the Corporation of the City of London under the above provisions¹⁶;
- 84 (b) in respect of the disposal of objects vested in it and comprised in its collections¹⁷;
- 85 (c) by way of gift or bequest¹⁸; or
- 86 (d) by way of grant from English Heritage¹⁹,

must not, except with the approval of the authority and the corporation, be applied by the board otherwise than in defraying expenses of the general administration of its collections and of any place where those collections are, or any part of them is, kept²⁰. However, these provisions²¹ do not authorise the application by the board of any money received by it by way of gift or bequest in a manner inconsistent with any condition attached to the gift or bequest²².

- 1 As to the Historic Buildings and Monuments Commission for England see PARA 803.
- 2 As to the Museum of London and the board see PARA 857.
- 3 See the Museum of London Act 1986 s 4(2).
- 4 For these purposes, 'London' includes all Greater London and the surrounding region: Museum of London Act 1986 s 4(3). As to the meaning of 'Greater London' see PARA 859 note 4.
- 5 Museum of London Act 1986 s 4(1). As to the power of the board to provide archaeological services and undertake archaeological investigations and research see the Museum of London Act 1965 s 3(3); and PARA 859.
- 6 As to the meaning of 'person' see PARA 803 note 16.
- 7 Museum of London Act 1986 s 4(1).
- 8 As to the Greater London Authority see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 34, 79 et seq.
- 9 As to the Corporation of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 40 et seq.
- 10 Ie in accordance with the Museum of London Act 1965 s 15: see the text to notes 11-14.
- 11 Museum of London Act 1965 s 15(1) (amended by the Local Government Act 1985 s 43(3); SI 1992/1311; Greater London Authority Act 2007 s 47(2), (3)).
- 12 Museum of London Act 1965 s 15(2) (amended by the Local Government Act 1985 s 43(3); SI 1992/1311; Greater London Authority Act 2007 s 47(2), (4)).
- 13 Museum of London Act 1965 s 15(3) (s 15(3) substituted, (4) added, by the Greater London Authority Act 2007 s 47(2), (5)).
- 14 Museum of London Act 1965 s 15(4) (as added: see note 13).
- 15 Any interest received by the board on the investment of any money received by it in any way must be treated, for these purposes, as forming part of the money received in that way: Museum of London Act 1965 s 14(3).
- 16 See the Museum of London Act 1965 s 14(1)(a) (amended by the Museum of London Act 1985 ss 4(4), 7(3), Schedule).
- 17 Museum of London Act 1965 s 14(1)(b). Moneys received by the board in such a way must not be applied by them, except with the approval of the authority and the corporation, otherwise than in the exercise of the power conferred on the board by s 5(1) (see PARA 861): s 14(2) (amended by the Local Government Act 1985 s 43(3); SI 1992/1311; Greater London Authority Act 2007 s 47(1)).
- 18 Museum of London Act 1965 s 14(1)(c). This includes money received under s 2(2) (see PARA 857): see s 14(1)(c).
- 19 Ie under the Museum of London Act 1986 s 4 (see the text to notes 1-7): Museum of London Act 1965 s 14(1)(d) (added by the Museum of London Act 1985 ss 4(4), 7(3), Schedule).
- 20 Museum of London Act 1965 s 14(1) (amended by the Local Government Act 1985 s 43(3); SI 1992/1311; Greater London Authority Act 2007 s 47(1)). As to the keeping of collections see PARA 860.
- 21 Ie the Museum of London Act 1965 s 14(1)-(3): see the text to notes 15-20.
- 22 See the Museum of London Act 1965 s 14(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/G. THE VICTORIA AND ALBERT MUSEUM/864. The Board of Trustees.

G. THE VICTORIA AND ALBERT MUSEUM

864. The Board of Trustees.

There is a body known as the Board of Trustees of the Victoria and Albert Museum¹. The board is a body corporate². The board is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown³, and the trustees and their staff are not to be regarded as civil servants and the board's property is not to be regarded as property of, or held on behalf of, the Crown⁴. Subject to the provisions of any enactment⁵, the board is not exempt from any tax, duty, rate, levy or other charge whatever (whether general or local)⁶.

The board may regulate its own procedure⁷, and may make arrangements for any of its functions, other than the power to acquire or dispose of land⁸, to be discharged by committees⁹. The validity of any proceedings of the board is not affected by any vacancy among the trustees or by any defect in the appointment of any trustee¹⁰.

The fixing of the seal of the board must be authenticated by the signature of the chairman or of some other person authorised either generally or specially by the board to act for that purpose¹¹. A document purporting to be duly executed under the seal of the board, or to be signed on the board's behalf, is receivable in evidence and, unless the contrary is proved, is deemed to be so executed or signed¹².

1 National Heritage Act 1983 s 1(1). As to the membership of the board see Sch 1 para 3. As to the payment of allowances to the trustees and members of any committee see Sch 1 para 7 (amended by SI 1992/1311). The Board of Trustees, so far as it is a charity, and any institution which is administered by or on its behalf and established for general or special purposes, is an exempt charity for the purposes of the Charities Act 1993: see ss 3, 96(1), Sch 2; and **CHARITIES** vol 8 (2010) PARA 315. As to the vesting of objects in the board see PARA 869.

2 National Heritage Act 1983 Sch 1 para 1. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 2; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1101 et seq.

3 National Heritage Act 1983 Sch 1 para 2(1). However, in relation to any matter as respects which the board acts by virtue of a direction by a Minister of the Crown under s 2(4) (see PARA 866), the board enjoys the same privileges, immunities and exemptions as those enjoyed in relation to that matter by the minister giving the direction: Sch 1 para 2(3). As to the legal status of bodies not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

4 National Heritage Act 1983 Sch 1 para 2(2). As to the power to appoint staff see PARA 865. As to the civil service see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 549 et seq.

5 As to the meaning of 'enactment' see PARA 805 note 5.

6 National Heritage Act 1983 Sch 1 para 2(4) (amended by the Local Government and Rating Act 1997 s 33(1), Sch 3 para 18(2)(a)).

7 See the National Heritage Act 1983 Sch 1 para 6(1). As to quorum see Sch 1 para 6(1), (7).

8 As to the meaning of 'land' see PARA 804 note 30.

9 See the National Heritage Act 1983 Sch 1 para 6(2)-(6).

10 National Heritage Act 1983 Sch 1 para 6(8).

11 National Heritage Act 1983 Sch 1 para 8(1). As to the corporate seal see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1122 et seq.

12 National Heritage Act 1983 Sch 1 para 8(2). Certain records of the board are public records for the purposes of the Public Records Act 1958; see s 10, Sch 1 para 3, Table Pt II; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 835.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/G. THE VICTORIA AND ALBERT MUSEUM/865. Director and staff.

865. Director and staff.

There is a director of the Victoria and Albert Museum who is appointed by the Board of Trustees of the museum¹ with the approval of the Prime Minister², and who is responsible to the board for the general exercise of the board's functions³.

The board may appoint such other employees as it thinks fit⁴. The board must pay to them such remuneration and allowances as it may determine⁵, and the employees are appointed on such other terms and conditions as the board may determine⁶.

1 As to the board see PARA 864.

2 National Heritage Act 1983 Sch 1 para 4(1). As to the Prime Minister see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 394-398.

3 National Heritage Act 1983 Sch 1 para 4(2). As to the functions of the board see PARA 866.

4 National Heritage Act 1983 Sch 1 para 4(3).

5 National Heritage Act 1983 Sch 1 para 4(4). A determination under Sch 1 para 4(4) or (5) (see the text to note 6) is ineffective unless made with the approval of the Secretary of State given with the Treasury's consent: Sch 1 para 4(6) (amended by SI 1992/1311). As to the Secretary of State see PARA 802 note 2. As to the meaning of 'Treasury' see PARA 809 note 4.

6 National Heritage Act 1983 Sch 1 para 4(5). See also note 5. Employment with the board is included among the kinds of employment to which a scheme under the Superannuation Act 1972 s 1 can apply: National Heritage Act 1983 Sch 1 para 4(7). See further PARA 896. As to the provision made in respect of the employment by the board of staff formerly employed in the civil service for the purposes of the museum see Sch 1 para 5 (amended by SI 1992/1311; the Employment Rights Act 1996 s 240, Sch 1 para 23; Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/G. THE VICTORIA AND ALBERT MUSEUM/866. General functions of the Board of Trustees.

866. General functions of the Board of Trustees.

So far as practicable, and subject to the provisions of the National Heritage Act 1983, the Board of Trustees of the Victoria and Albert Museum¹ must:

- 87 (1) care for, preserve and add to the objects in its collections²;
- 88 (2) secure that the objects are exhibited to the public³;
- 89 (3) secure that the objects are available to persons⁴ seeking to inspect them in connection with study or research⁵; and
- 90 (4) generally promote the public's enjoyment and understanding of art, craft and design, both by means of the board's collections and by such other means as the board considers appropriate⁶.

For those purposes the board may⁷:

- 91 (a) provide education, instruction and advice and carry out research⁸;
 - 92 (b) enter into contracts and other agreements (including agreements for the board's occupation or management of the building known as the Victoria and Albert Museum or other premises)⁹;
 - 93 (c) acquire and dispose of land¹⁰ and other property¹¹;
 - 94 (d) do such things, including requiring payment for admission or for other services or for goods provided by it, as it thinks necessary or expedient:
- 5
- 8. (i) for preserving, and increasing the utility of, its collections¹²;
 - 9. (ii) for securing the due administration of anything vested in or acquired by the board, and any premises occupied or managed by it, under or by virtue of the National Heritage Act 1983¹³; and
 - 10. (iii) otherwise for the purposes of its functions¹⁴.
- 6

If a Minister of the Crown directs the board to exercise functions which are exercisable by him (whether by virtue of an enactment¹⁵ or otherwise), which in his opinion can appropriately be exercised by the board having regard to its functions and resources, and which are specified in the direction, the board must exercise them on his behalf in such manner as he may from time to time direct¹⁶.

The board may allow premises occupied or managed by it to be used by other persons (for payment or otherwise) for purposes not connected with its functions in heads (1) to (4) above, if the board is satisfied that to do so would not conflict unduly with those functions¹⁷.

The board must make a report to the Secretary of State on the exercise of its functions since the last report was made, not later than three years (or such shorter period as the Secretary of State may direct) since the last report was made¹⁸. Each report must include a statement of action taken by the board to enable disabled members of the public to use any services or facilities provided by the board¹⁹; and a statement of the total amount received by the board by way of admission charges in the period covered by the report²⁰. The Secretary of State must lay a copy of each report before each House of Parliament²¹.

- 1 As to the board see PARA 864.
- 2 National Heritage Act 1983 s 2(1)(a).
- 3 National Heritage Act 1983 s 2(1)(b). As to the vesting of objects in the board see PARA 869.
- 4 As to the meaning of 'person' see PARA 803 note 16.
- 5 National Heritage Act 1983 s 2(1)(c).
- 6 National Heritage Act 1983 s 2(1)(d).
- 7 Ie subject to the provisions of the National Heritage Act 1983: see s 2(2), (3).
- 8 National Heritage Act 1983 s 2(2)(a).
- 9 National Heritage Act 1983 s 2(2)(b).
- 10 As to the meaning of 'land' see PARA 804 note 30.
- 11 National Heritage Act 1983 s 2(2)(c). The board may not acquire or dispose of land without the Secretary of State's consent: s 2(5) (amended by SI 1992/1311). As to the power of the Secretary of State to transfer land vested in him to the board see the Museums and Galleries Act 1992 s 8, Sch 6; and PARA 822. As to the Secretary of State see PARA 802 note 2.
- 12 National Heritage Act 1983 s 2(3)(a).
- 13 National Heritage Act 1983 s 2(3)(b).
- 14 National Heritage Act 1983 s 2(3)(c).
- 15 As to the meaning of 'enactment' see PARA 805 note 5.
- 16 National Heritage Act 1983 s 2(4). However, nothing in this provision authorises the board to exercise a function of making regulations or other instruments of a legislative character: s 2(4). In relation to any matter as respects which the board acts by virtue of a direction under s 2(4), the board enjoys the same privileges, immunities and exemptions as those enjoyed in relation to that matter by the minister giving the direction: see Sch 1 para 2(3); and PARA 864.
- 17 National Heritage Act 1983 s 2(6).
- 18 See the National Heritage Act 1983 Sch 1 para 10(1), (3) (s 10(1)-(3) amended by SI 1992/1311). The first report was to be made not later than the expiry of the period of three years (or such shorter period as the Secretary of State directed), commencing with the day of the board's establishment (ie 30 September 1983): see the National Heritage Act 1983 ss 1(1), 41(1), Sch 1 para 10(2) (as so amended); National Heritage Act 1983 (Commencement No 1) Order 1983, SI 1983/1062, art 3, Sch 2.
- 19 National Heritage Act 1983 Sch 1 para 10(4). As to the prohibition against discrimination in the provision of goods, facilities and services to disabled persons see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 582 et seq.
- 20 National Heritage Act 1983 Sch 1 para 10(5). Such statement must include information, in such detail as the board thinks fit, about rates of, exemptions from and reductions in admission charges made by the board: Sch 1 para 10(5).
- 21 National Heritage Act 1983 Sch 1 para 10(6) (amended by SI 1992/1311). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/G. THE VICTORIA AND ALBERT MUSEUM/867. Power to form companies.

867. Power to form companies.

Without prejudice to its general powers¹, the Board of Trustees of the Victoria and Albert Museum may, with the consent of the Secretary of State² and subject to any conditions he may impose, form or take part in forming one or more bodies corporate which, or each of which, has as its main object or objects one or more of the following³:

- 95 (1) the production and publication of books, films or other informative material relating to art, craft or design⁴;
- 96 (2) the commissioning of works of art, craft or design⁵;
- 97 (3) the production of replicas or reproductions of works of art, craft or design, or of souvenirs⁶;
- 98 (4) the sale of informative material relating to art, craft or design, of works of art, craft or design, of replicas or reproductions of such works, or of souvenirs⁷; and
- 99 (5) the provision of catering or car parking or other services or facilities for the public at any premises occupied or managed by the board⁸.

The board may hold interests in any such body, exercise rights conferred by the holding of interests in it, and provide financial or other assistance to or in respect of it, including assistance by way of guarantee of its obligations⁹.

1 The National Heritage Act 1983 s 3 is without prejudice to any power of the Board of Trustees of the Victoria and Albert Museum to undertake anything mentioned in s 3(2) (see the text to notes 4-8) by virtue of s 2 (see PARA 866): s 3(5). As to the board see PARA 864.

2 As to the Secretary of State see PARA 802 note 2.

3 See the National Heritage Act 1983 s 3(1) (amended by SI 1992/1311).

4 National Heritage Act 1983 s 3(2)(a).

5 National Heritage Act 1983 s 3(2)(b). For these purposes, references to works of design are to works illustrating the principles of design: s 3(4).

6 National Heritage Act 1983 s 3(2)(c).

7 National Heritage Act 1983 s 3(2)(d).

8 National Heritage Act 1983 s 3(2)(e).

9 National Heritage Act 1983 s 3(3).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/G. THE VICTORIA AND ALBERT MUSEUM/868. Acquisition and disposal of objects.

868. Acquisition and disposal of objects.

The Board of Trustees of the Victoria and Albert Museum¹ may acquire (whether by purchase, exchange or gift) any objects which in its opinion it is desirable to add to its collections². Without prejudice to any power apart from this provision, a Minister of the Crown may transfer to the board any object (whether or not he acquired it before the board's establishment) if in his opinion it would appropriately form part of its collections³.

The board may not dispose of an object the property in which is vested in the board and which is comprised in its collections unless:

- 100 (1) the disposal is by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised⁴; or
- 101 (2) the disposal is by way of sale, exchange or gift of an object which in the board's opinion is unsuitable for retention in its collections and can be disposed of without detriment to the interests of students or other members of the public⁵; or
- 102 (3) the disposal is an exercise of the statutory power of transfer⁶; or
- 103 (4) the disposal, by whatever means, including destruction, is of an object which the board is satisfied has become useless for the purposes of its collections by reason of damage, physical deterioration, or infestation by destructive organisms⁷.

Money accruing to the board by virtue of any such disposal must be applied by the board in the acquisition of objects to be added to its collections⁸.

The board is a specified transferor and transferee for the purposes of the general powers of transfer between collections⁹, and a specified body for the purposes of the statutory provision for vesting of gifts to the nation where the donor has not specified a destination¹⁰.

In certain circumstances the board may transfer an object from its collections under the Holocaust (Return of Cultural Objects) Act 2009¹¹.

1 As to the board see PARA 864.

2 National Heritage Act 1983 s 6(1). As to the vesting of objects in the board see PARA 869.

3 National Heritage Act 1983 s 6(2). The board was established on 30 September 1983: see ss 1(1), 41(1); National Heritage Act 1983 (Commencement No 1) Order 1983, SI 1983/1062, art 3, Sch 2.

4 National Heritage Act 1983 s 6(3)(a).

5 National Heritage Act 1983 s 6(3)(b).

6 See the National Heritage Act 1983 s 6(3)(c) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 13(1)). The statutory power of transfer is that under the Museums and Galleries Act 1992 s 6 (see PARA 820): see s 6(3)(c) (as so amended).

7 National Heritage Act 1983 s 6(3)(d). An object may be disposed of as mentioned in this provision notwithstanding a trust or condition, express or implied, prohibiting or restricting the disposal of the object: s 6(5).

8 National Heritage Act 1983 s 6(6).

- 9 See the Museums and Galleries Act 1992 s 6, Sch 5; and PARA 820.
- 10 See the Museums and Galleries Act 1992 s 7: see PARA 821.
- 11 See PARA 1103.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/G. THE VICTORIA AND ALBERT MUSEUM/869. Vesting, lending and borrowing of objects.

869. Vesting, lending and borrowing of objects.

Where, immediately before 1 April 1984 (the 'vesting day)¹, the property in an object was vested in a Minister of the Crown and the object:

- 104 (1) then formed part of the collections of the institution known as the Victoria and Albert Museum²; or
- 105 (2) was then in use in respect of the collections or solely for the purposes of the administration of the institution³,

then the property on that day became vested instead in the Board of Trustees of the Victoria and Albert Museum⁴. Similar provision was made for the transfer to the board of any interest in a fund or share in a fund (whether or not of money) held for the purposes of the institution vested in a Minister of the Crown immediately before the vesting day⁵. On the vesting day any right, power, duty or liability which was immediately before that day exercisable by or incumbent on a Minister of the Crown:

- 106 (a) in relation to any object mentioned in head (1) or (2) above⁶; or
- 107 (b) by virtue of his having any such interest as is mentioned above⁷,

instead became exercisable by or incumbent on the board⁸.

The board may lend any object the property in which is vested in it and which is comprised in its collections, whether or not the loan is for purposes of public exhibition, and whether or not under the terms of the loan the object is to remain in the United Kingdom⁹. In deciding whether or not to lend an object, and in determining the time for which and the conditions subject to which an object is to be lent, the board:

- 108 (i) must give special consideration to a request for the loan of an object for public exhibition¹⁰; and
- 109 (ii) subject to that, must have regard to the interests of students and other persons visiting the board's collections, the suitability of the prospective borrower, the purpose of the loan, the physical condition and degree of rarity of the object, and any risks to which it is likely to be exposed¹¹.

Where the property in an object has become vested in the board subject to a condition, this power to lend the object is exercisable in a manner inconsistent with the condition if either: (A) 25 years have elapsed since the date on which the property became vested in the board or, where it became vested in the board under the initial vesting provisions above¹², in the minister¹³; or (B) the person¹⁴ who first imposed the condition or his personal representatives¹⁵ has or have consented in writing¹⁶ to the exercise of the power in that manner¹⁷.

The board may accept loans of objects for the purpose (depending on the terms of the loan) of exhibiting them, or of study or research by the board or by persons seeking to inspect them¹⁸.

¹ See the National Heritage Act 1983 ss 4(8), 5(3), 41(1); National Heritage Act 1983 (Commencement No 6) Order 1984, SI 1984/225.

2 National Heritage Act 1983 s 4(1)(a). In the case of an object mentioned in s 4(1)(a), it is immaterial that, immediately before the vesting day, it was situated elsewhere than at premises managed for the purposes of the institution (as where it was on loan): s 4(2).

3 National Heritage Act 1983 s 4(1)(b).

4 National Heritage Act 1983 s 4(1). As to the board see PARA 864. Section 4(1), (4)(a) (see head (a) in the text) does not apply as regards an object excepted from those provisions by an order made by the Secretary of State and coming into force before the vesting day (s 4(5) (s 4(5), (6) amended by SI 1992/1311)); and nothing in the National Heritage Act 1983 s 4(1) or s 4(4)(a) affects chattels vested in the Secretary of State by virtue of the Wellington Museum Act 1947 (see PARA 855), but he and the board may make agreements for the board to perform, on his behalf, functions exercisable by him in relation to the chattels mentioned in s 2(1) of that Act (see PARA 855) (National Heritage Act 1983 s 4(6) (as so amended)). The power to make an order under s 4(5) was exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: see s 4(7). The Victoria and Albert Museum (Excepted Objects) Order 1984, SI 1984/226, has been made. As to the Secretary of State see PARA 802 note 2. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

5 See the National Heritage Act 1983 s 4(3).

6 See the National Heritage Act 1983 s 4(4)(a). See also note 4.

7 See the National Heritage Act 1983 s 4(4)(b).

8 National Heritage Act 1983 s 4(4). Any gift, by will or otherwise, which is contained in an instrument made or executed before the vesting day but coming into effect on or after that day, and which would otherwise have vested an interest in property (of any nature) in a Minister of the Crown for the purposes of the institution, has effect so as to vest the interest in the board in place of the minister in the absence of any contrary intention expressed in that or another instrument made by the testator or donor: see the National Heritage Act 1983 s 5(1), (2).

9 National Heritage Act 1983 s 7(1). As to the meaning of 'United Kingdom' see PARA 804 note 2. As to the government indemnity scheme for loans see PARA 1090. As to loans overseas see PARAS 1091, 1092.

10 National Heritage Act 1983 s 7(2)(a).

11 National Heritage Act 1983 s 7(2)(b).

12 Ie under the National Heritage Act 1983 s 4(1): see the text to notes 1-4.

13 National Heritage Act 1983 s 7(3)(a).

14 As to the meaning of 'person' see PARA 803 note 16.

15 As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.

16 As to the meaning of 'writing' see PARA 805 note 14.

17 National Heritage Act 1983 s 7(3)(b).

18 National Heritage Act 1983 s 7(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/H. THE SCIENCE MUSEUM/870. The Board of Trustees.

H. THE SCIENCE MUSEUM

870. The Board of Trustees.

There is a body known as the Board of Trustees of the Science Museum¹. The board is a body corporate². The board is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown³, and the trustees and their staff are not to be regarded as civil servants and the board's property is not to be regarded as property of, or held on behalf of, the Crown⁴. Subject to the provisions of any enactment⁵, the board is not exempt from any tax, duty, rate, levy or other charge whatever (whether general or local)⁶.

The board may regulate its own procedure⁷, and may make arrangements for any of its functions, other than the power to acquire or dispose of land⁸, to be discharged by committees⁹. The validity of any proceedings of the board is not affected by any vacancy among the trustees or by any defect in the appointment of any trustee¹⁰.

The fixing of the seal of the board must be authenticated by the signature of the chairman or of some other person authorised either generally or specially by the board to act for that purpose¹¹. A document purporting to be duly executed under the seal of the board, or to be signed on the board's behalf, is receivable in evidence and, unless the contrary is proved, is deemed to be so executed or signed¹².

1 National Heritage Act 1983 s 9(1). The board, so far as it is a charity, and any institution which is administered by or on its behalf and established for general or special purposes, is an exempt charity for the purposes of the Charities Act 1993: see ss 3, 96(1), Sch 2; and **CHARITIES** vol 8 (2010) PARA 315.

2 National Heritage Act 1983 Sch 1 para 11. As to the constitution of the board see Sch 1 para 13. As to the payment of allowances to the trustees and members of committees see Sch 1 para 17 (amended by SI 1992/1311). As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 2; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1101 et seq.

3 National Heritage Act 1983 Sch 1 para 12(1). However, in relation to any matter as respects which the board acts by virtue of a direction given by a Minister of the Crown under s 10(4) (see PARA 872), the board enjoys the same privileges, immunities and exemptions as those enjoyed in relation to that matter by the minister giving the direction: Sch 1 para 12(3). As to the legal status of bodies not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

4 National Heritage Act 1983 Sch 1 para 12(2). As to the power to appoint staff see PARA 871. As to the civil service see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 549 et seq.

5 As to the meaning of 'enactment' see PARA 805 note 5.

6 National Heritage Act 1983 Sch 1 para 12(4) (amended by the Local Government and Ratings Act 1997 s 33(1), Sch 3 para 18(3)(a)).

7 See the National Heritage Act 1983 Sch 1 para 16(1). As to quorum see Sch 1 para 16(1), (7).

8 As to the meaning of 'land' see PARA 804 note 30.

9 See the National Heritage Act 1983 Sch 1 para 16(2)-(6). As to the general functions of the board see PARA 872.

10 National Heritage Act 1983 Sch 1 para 16(8).

11 National Heritage Act 1983 Sch 1 para 18(1). As to the corporate seal see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1122 et seq.

12 National Heritage Act 1983 Sch 1 para 18(2). Certain records of the board are public records for the purposes of the Public Records Act 1958; see s 10, Sch 1 para 3, Table Pt II; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 835.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/H. THE SCIENCE MUSEUM/871. Director and staff.

871. Director and staff.

There is a director of the Science Museum who is appointed by the Board of Trustees of the museum¹ with the approval of the Prime Minister². The director is responsible to the board for the general exercise of the board's functions³.

The board may appoint such other employees as it thinks fit⁴ and must pay to them such remuneration and allowances as it may determine⁵. The employees are appointed on such other terms and conditions as the board may determine⁶.

1 As to the board see PARA 870.

2 National Heritage Act 1983 Sch 1 para 14(1). As to the Prime Minister see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 394-398.

3 National Heritage Act 1983 Sch 1 para 14(2). As to the functions of the board see PARA 872.

4 National Heritage Act 1983 Sch 1 para 14(3).

5 National Heritage Act 1983 Sch 1 para 14(4). A determination under Sch 1 para 14(4) or (5) (see the text to note 6) is ineffective unless made with the approval of the Secretary of State given with the Treasury's consent: Sch 1 para 14(6) (amended by SI 1992/1311). As to the Secretary of State see PARA 802 note 2. As to the meaning of 'Treasury' see PARA 809 note 4.

6 National Heritage Act 1983 Sch 1 para 14(5). See also note 5. Employment with the board is included among the kinds of employment to which a scheme under the Superannuation Act 1972 s 1 can apply: National Heritage Act 1983 Sch 1 para 14(7). See further PARA 896. As to the provision made in respect of the employment by the board of staff formerly employed in the civil service for the purposes of the museum see Sch 1 para 15 (amended by SI 1992/1311; the Employment Rights Act 1996 s 240, Sch 1 para 23; Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/H. THE SCIENCE MUSEUM/872. General functions of the Board of Trustees.

872. General functions of the Board of Trustees.

So far as practicable and subject to the provisions of the National Heritage Act 1983, the Board of Trustees of the Science Museum¹ must:

- 110 (1) care for, preserve and add to the objects in its collections²;
- 111 (2) secure that the objects are exhibited to the public³;
- 112 (3) secure that the objects are available to persons⁴ seeking to inspect them in connection with study or research⁵; and
- 113 (4) generally promote the public's enjoyment and understanding of science and technology and of the development of those subjects, both by means of the board's collections and by such other means as the board considers appropriate⁶.

For those purposes the board may⁷:

- 114 (a) provide education, instruction and advice and carry out research⁸;
- 115 (b) enter into contracts and other agreements (including agreements for the board's occupation or management of the building known as the Science Museum or other premises)⁹;
- 116 (c) acquire and dispose of land¹⁰ and other property¹¹;
- 117 (d) do such things, including requiring payment for admission or for other services or for goods provided by it, as it thinks necessary or expedient:

7

- 11. (i) for preserving, and increasing the utility of, its collections¹²;
- 12. (ii) for securing the due administration of anything vested in or acquired by the board, and any premises occupied or managed by it, under or by virtue of the National Heritage Act 1983¹³; and
- 13. (iii) otherwise for the purposes of its functions¹⁴.

8

If a Minister of the Crown directs the board to exercise functions which are exercisable by him (whether by virtue of an enactment¹⁵ or otherwise), which in his opinion can appropriately be exercised by the board having regard to its functions and resources, and which are specified in the direction, the board must exercise them on his behalf in such manner as he may from time to time direct¹⁶.

The board may allow premises occupied or managed by it to be used by other persons (for payment or otherwise) for purposes not connected with its functions in heads (1) to (4) above, if the board is satisfied that to do so would not conflict unduly with those functions¹⁷.

The board must make a report to the Secretary of State on the exercise of its functions since the last report was made¹⁸, not later than three years (or such shorter period as the Secretary of State may direct) since that last report was made¹⁹. Each report must include: (A) a statement of action taken by the board to enable disabled members of the public to use any services or facilities provided by the board²⁰; and (B) a statement of the total amount received by the board by way of admission charges in the period covered by the report²¹. The Secretary of State must lay a copy of each report before each House of Parliament²².

- 1 As to the board see PARA 870.
- 2 National Heritage Act 1983 s 10(1)(a).
- 3 National Heritage Act 1983 s 10(1)(b).
- 4 As to the meaning of 'person' see PARA 803 note 16.
- 5 National Heritage Act 1983 s 10(1)(c).
- 6 National Heritage Act 1983 s 10(1)(d).
- 7 ie subject to the provisions of the National Heritage Act 1983: s 10(2), (3).
- 8 National Heritage Act 1983 s 10(2)(a).
- 9 National Heritage Act 1983 s 10(2)(b).
- 10 As to the meaning of 'land' see PARA 804 note 30.
- 11 National Heritage Act 1983 s 10(1)(c). The board may not acquire or dispose of land without the Secretary of State's consent: s 10(5) (amended by SI 1992/1311). As to the Secretary of State see PARA 802 note 2. As to the power of the Secretary of State to transfer land vested in him to the board see the Museums and Galleries Act 1992 s 8, Sch 6; and PARA 822.
- 12 National Heritage Act 1983 s 10(3)(a).
- 13 National Heritage Act 1983 s 10(3)(b).
- 14 National Heritage Act 1983 s 10(3)(c).
- 15 As to the meaning of 'enactment' see PARA 805 note 5.
- 16 National Heritage Act 1983 s 10(4). Nothing in this provision authorises the board to exercise a function of making regulations or other instruments of a legislative character: s 10(4). In relation to any matter as respects which the board acts by virtue of a direction given by a Minister of the Crown under s 10(4), the board enjoys the same privileges, immunities and exemptions as those enjoyed in relation to that matter by the minister giving the direction: see Sch 1 para 12(3); and PARA 870.
- 17 National Heritage Act 1983 s 10(6).
- 18 See the National Heritage Act 1983 Sch 1 para 20(1) (Sch 1 para 20(1)-(3) amended by SI 1992/1311). The first report was to be made not later than the expiry of the period of three years (or such shorter period as the Secretary of State directed), commencing with the day of the board's establishment (ie 30 September 1983); see the National Heritage Act 1983 ss 1(1), 41(1), Sch 1 para 20(2) (as so amended); National Heritage Act 1983 (Commencement No 1) Order 1983, SI 1983/1062, art 3, Sch 2.
- 19 See the National Heritage Act 1983 Sch 1 para 20(3) (as amended: see note 18).
- 20 National Heritage Act 1983 Sch 1 para 20(4). As to the prohibition against discrimination in the provision of goods, facilities and services to disabled persons see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 582 et seq.
- 21 National Heritage Act 1983 Sch 1 para 20(5). This statement must include information, in such detail as the board thinks fit, about rates of, exemptions from and reductions in admission charges made by the board: Sch 1 para 20(5).
- 22 National Heritage Act 1983 Sch 1 para 20(6) (amended by SI 1992/1311). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/H. THE SCIENCE MUSEUM/873. Power to form companies.

873. Power to form companies.

Without prejudice to its general powers¹, the Board of Trustees of the Science Museum may, with the consent of the Secretary of State² and subject to any conditions he may impose, form or take part in forming one or more bodies corporate which, or each of which, has as its main object or objects one or more of the following³:

- 118 (1) the production and publication of books, films or other informative material relating to science and technology⁴;
- 119 (2) the production of replicas or reproductions of objects relating to science and technology, or of souvenirs⁵;
- 120 (3) the sale of informative material relating to science and technology, or of replicas or reproductions of objects relating to science and technology, or of souvenirs⁶; and
- 121 (4) the provision of catering or car parking or other services or facilities for the public at any premises occupied or managed by the board⁷.

The board may hold interests in any such body, exercise rights conferred by the holding of interests in it, and provide financial or other assistance to or in respect of it, including assistance by way of guarantee of its obligations⁸.

1 The National Heritage Act 1983 s 11 is without prejudice to any power of the Board of Trustees of the Science Museum to undertake anything mentioned in s 11(2) (see heads (1)-(4) in the text) by virtue of s 10 (see PARA 872): s 11(5). As to the board see PARA 870.

2 As to the Secretary of State see PARA 802 note 2.

3 National Heritage Act 1983 s 11(1) (amended by SI 1992/1311).

4 National Heritage Act 1983 s 11(2)(a). References in s 11 to science and technology include references to the development of those subjects: s 11(4).

5 National Heritage Act 1983 s 11(2)(b).

6 National Heritage Act 1983 s 11(2)(c).

7 National Heritage Act 1983 s 11(2)(d).

8 National Heritage Act 1983 s 11(3).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/H. THE SCIENCE MUSEUM/874. Acquisition and disposal of objects.

874. Acquisition and disposal of objects.

The Board of Trustees of the Science Museum¹ may acquire (whether by purchase, exchange or gift) any objects which in its opinion it is desirable to add to its collections². Without prejudice to any power apart from this provision, a Minister of the Crown may transfer to the board any object (whether or not he acquired it before the board's establishment) if in his opinion it would appropriately form part of its collections³.

The board may not dispose of an object the property in which is vested in the board and which is comprised in its collections unless:

- 122 (1) the disposal is by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised⁴; or
- 123 (2) the disposal is by way of sale, exchange or gift of an object which in the board's opinion is unsuitable for retention in its collections and can be disposed of without detriment to the interests of students or other members of the public⁵; or
- 124 (3) the disposal is an exercise of the statutory power of transfer⁶; or
- 125 (4) the disposal, by whatever means, including destruction, is of an object which the board is satisfied has become useless for the purposes of its collections by reason of damage, physical deterioration, or infestation by destructive organisms⁷.

Money accruing to the board by virtue of any such disposal must be applied by the board in the acquisition of objects to be added to its collections⁸.

The board is a specified transferor and transferee for the purposes of the general powers of transfer between collections⁹, and a specified body for the purposes of the statutory provision for vesting of gifts to the nation where the donor has not specified a destination¹⁰.

In certain circumstances the board may transfer an object from its collections under the Holocaust (Return of Cultural Objects) Act 2009¹¹.

1 As to the board see PARA 870.

2 National Heritage Act 1983 s 14(1). As to the vesting of objects in the board, and as to the board's power to lend or borrow objects, see PARA 875.

3 National Heritage Act 1983 s 14(2). The board was established on 30 September 1983: see ss 9(1), 41(1); National Heritage Act 1983 (Commencement No 1) Order 1983, SI 1983/1062, art 3, Sch 2.

4 National Heritage Act 1983 s 14(3)(a).

5 National Heritage Act 1983 s 14(3)(b).

6 National Heritage Act 1983 s 14(3)(c) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 13(1)). The statutory power of transfer is that under the Museums and Galleries Act 1992 s 6 (see PARA 820): see the National Heritage Act 1983 s 14(3)(c).

7 National Heritage Act 1983 s 14(3)(d). An object may be disposed of as mentioned in this provision notwithstanding a trust or condition, express or implied, prohibiting or restricting the disposal of the object: s 14(5).

- 8 National Heritage Act 1983 s 14(6).
- 9 See the Museums and Galleries Act 1992 s 6, Sch 5; and PARA 820.
- 10 See the Museums and Galleries Act 1992 s 7; see PARA 821.
- 11 See PARA 1103.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/H. THE SCIENCE MUSEUM/875. Vesting, lending and borrowing of objects.

875. Vesting, lending and borrowing of objects.

Where, immediately before 1 April 1984 (the 'vesting day')¹, the property in an object was vested in a Minister of the Crown and the object:

- 126 (1) then formed part of the collections of the institution known as the Science Museum or the institution known as the Patent Museum²; or
- 127 (2) was then in use in respect of the collections or solely for the purposes of the administration of the institutions³,

then the property on that day became vested instead in the Board of Trustees of the Science Museum⁴. Similar provision was made for the transfer to the board of any interest in a fund or share in a fund (whether or not of money) held for the purposes of the institution known as the Science Museum vested in a Minister of the Crown immediately before the vesting day.⁵ On the vesting day any right, power, duty or liability which was immediately before that day exercisable by or incumbent on a Minister of the Crown:

- 128 (a) in relation to any object mentioned in head (1) or (2) above⁶; or
- 129 (b) by virtue of his having any such interest as is mentioned above⁷,

instead became exercisable by or incumbent on the board⁸.

The board may lend any object the property in which is vested in the board and which is comprised in its collections, whether or not the loan is for purposes of public exhibition, and whether or not under the terms of the loan the object is to remain in the United Kingdom⁹. In deciding whether or not to lend an object, and in determining the time for which and the conditions subject to which an object is to be lent, the board:

- 130 (i) must give special consideration to a request for the loan of an object for public exhibition¹⁰; and
- 131 (ii) subject to that, must have regard to the interests of students and other persons¹¹ visiting the board's collections, the suitability of the prospective borrower, the purpose of the loan, the physical condition and degree of rarity of the object, and any risks to which it is likely to be exposed¹².

Where the property in an object has become vested in the board subject to a condition, this power to lend the object is exercisable in a manner inconsistent with the condition if either: (A) 25 years have elapsed since the date on which the property became vested in the board or, where it vested in it under the initial vesting provisions above¹³, in the minister¹⁴; or (B) the person who first imposed the condition or his personal representatives¹⁵ has or have consented in writing¹⁶ to the exercise of the power in that manner¹⁷.

The board may accept loans of objects for the purpose (depending on the terms of the loan) of exhibiting them, or of study or research by the board or by persons seeking to inspect them¹⁸.

¹ See the National Heritage Act 1983 ss 12(7), 13(3), 41(1); and the National Heritage Act 1983 (Commencement No 6) Order 1984, SI 1984/225.

2 National Heritage Act 1983 s 12(1)(a). In the case of an object mentioned in this provision, it is immaterial that, immediately before the vesting day, it was situated elsewhere than at premises managed for the purposes of the institutions (as where it was on loan): s 12(2).

3 National Heritage Act 1983 s 12(1)(b).

4 National Heritage Act 1983 s 12(1). Section 12(1), (4)(a) (see head (a) in the text) did not apply as regards an object excepted from those provisions by an order made by the Secretary of State and coming into force before the vesting day: see s 12(5) (amended by SI 1992/1311). The power to make such an order was exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: see the National Heritage Act 1983 s 12(6). No such order was made before the vesting day.

5 See the National Heritage Act 1983 s 12(3).

6 National Heritage Act 1983 s 12(4)(a).

7 National Heritage Act 1983 s 12(4)(b).

8 National Heritage Act 1983 s 12(4). See also note 4. Any gift, by will or otherwise, contained in an instrument made or executed before the vesting day but coming into effect on or after that day, and which would otherwise have vested an interest in property (of any nature) in a Minister of the Crown for the purposes of the institution known as the Science Museum or the institution known as the Patent Museum, has effect so as to vest the interest in the board in place of the minister in the absence of any contrary intention expressed in that or another instrument made by the testator or donor: s 13(1), (2).

9 National Heritage Act 1983 s 15(1). As to the meaning of 'United Kingdom' see PARA 804 note 2. As to the government indemnity scheme for loans see PARA 1090. As to loans overseas see PARAS 1091, 1092.

10 National Heritage Act 1983 s 15(2)(a).

11 As to the meaning of 'person' see PARA 803 note 16.

12 National Heritage Act 1983 s 15(2)(b).

13 Ie under the National Heritage Act 1983 s 12(1): see the text to notes 1-4.

14 National Heritage Act 1983 s 15(3)(a).

15 As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.

16 As to the meaning of 'writing' see PARA 805 note 14.

17 National Heritage Act 1983 s 15(3)(b).

18 National Heritage Act 1983 s 15(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/I. THE ARMOURIES/876. The Board of Trustees.

I. THE ARMOURIES

876. The Board of Trustees.

There is a body known as the Board of Trustees of the Armouries¹. The board is a body corporate². The board is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown³; the trustees and their staff are not to be regarded as civil servants, and the board's property is not to be regarded as property of, or held on behalf of, the Crown⁴. Subject to the provisions of any enactment⁵, the board is not exempt from any tax, duty, rate, levy or other charge whatever (whether general or local)⁶.

The board may regulate its own procedure⁷, and may make arrangements for any of its functions, other than the power to acquire or dispose of land⁸, to be discharged by committees⁹. The validity of any proceedings of the board is not affected by any vacancy among the trustees or by any defect in the appointment of any trustee¹⁰.

The fixing of the seal of the board must be authenticated by the signature of the chairman or of some other person authorised either generally or specially by the board to act for that purpose¹¹. A document purporting to be duly executed under the seal of the board, or to be signed on the board's behalf, is receivable in evidence and, unless the contrary is proved, is deemed to be so executed or signed¹².

1 National Heritage Act 1983 s 17(1). The board, so far as it is a charity, and any institution which is administered by or on its behalf and established for general or special purposes, is an exempt charity for the purposes of the Charities Act 1993: see ss 3, 96(1), Sch 2; and **CHARITIES** vol 8 (2010) PARA 315.

2 National Heritage Act 1983 Sch 1 para 21. As to the membership of the board see Sch 1 para 23. As to the payment of allowances to trustees and members of committees see Sch 1 para 27. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 2; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1101 et seq.

3 As to the legal status of bodies not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

4 National Heritage Act 1983 Sch 1 para 22(1). As to the power to appoint staff see PARA 877. As to the civil service see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 549 et seq.

5 As to the meaning of 'enactment' see PARA 805 note 5.

6 National Heritage Act 1983 Sch 1 para 22(2) (amended by the Local Government and Rating Act 1997 s 33(1), Sch 3 para 18(4)(a)).

7 See the National Heritage Act 1983 Sch 1 para 26(1). As to quorum see Sch 1 para 26(1), (7).

8 As to the meaning of 'land' see PARA 804 note 30.

9 See the National Heritage Act 1983 Sch 1 para 26(2)-(6). As to the board's functions see PARA 878.

10 National Heritage Act 1983 Sch 1 para 26(8).

11 National Heritage Act 1983 Sch 1 para 28(1). As to the corporate seal see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1122 et seq.

12 National Heritage Act 1983 Sch 1 para 28(2). Certain records of the board are public records for the purposes of the Public Records Act 1958: see s 10, Sch 1 para 3, Table Pt II; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 835.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/I. THE ARMOURIES/877. Director and staff.

877. Director and staff.

There is a director of the Armouries who is appointed by the Board of Trustees of the Armouries¹ with the approval of the Secretary of State². The director is responsible to the board for the general exercise of the board's functions³.

The board may appoint such other employees as it thinks fit⁴ and must pay to them such remuneration and allowances as it may determine⁵. The employees are appointed on such other terms and conditions as the board may determine⁶.

1 As to the board see PARA 876.

2 National Heritage Act 1983 Sch 1 para 24(1). As to the Secretary of State see PARA 802 note 2.

3 National Heritage Act 1983 Sch 1 para 24(2). As to the functions of the board see PARA 878.

4 National Heritage Act 1983 Sch 1 para 24(3).

5 National Heritage Act 1983 Sch 1 para 24(4). A determination under Sch 1 para 24(4) or (5) (see the text to note 6) is ineffective unless made with the approval of the Secretary of State given with the Treasury's consent: Sch 1 para 24(6). As to the meaning of 'Treasury' see PARA 809 note 4.

6 National Heritage Act 1983 Sch 1 para 24(5). See also note 5. Employment with the board is included among the kinds of employment to which a scheme under the Superannuation Act 1972 s 1 can apply: see the National Heritage Act 1983 Sch 1 para 24(7). See further PARA 896. As to the provision made in respect of the employment by the board of staff formerly employed in the civil service for the purposes of the Armouries see the National Heritage Act 1983 Sch 1 para 25 (amended by the Employment Rights Act 1996 s 240, Sch 1 para 23; Employment Rights (Dispute Resolution) Act 1998 s 1(2)).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/I. THE ARMOURIES/878. General functions of the Board of Trustees.

878. General functions of the Board of Trustees.

The Board of Trustees of the Armouries¹ must perform its functions for the general purpose of maintaining and exhibiting a national collection of arms, armour and associated objects, and of maintaining a record relating to arms and armour and to the Tower of London². So far as practicable and subject to the provisions of the National Heritage Act 1983, the board must:

- 132 (1) care for, preserve and add to the objects in its collection of arms, armour and associated objects³;
- 133 (2) secure that the objects are exhibited to the public⁴;
- 134 (3) secure that the objects are available to persons⁵ seeking to inspect them in connection with study or research⁶;
- 135 (4) maintain a record, which may include books, pictures and other articles, relating to its collection, to arms and armour generally and to the Tower⁷; and
- 136 (5) generally promote the public's enjoyment and understanding of arms and armour, both by means of the board's collection and by such other means as the board considers appropriate⁸.

For the purpose of fulfilling its duties under heads (1) to (5) above, the board may⁹:

- 137 (a) provide education, instruction and advice and carry out research¹⁰;
- 138 (b) enter into contracts and other agreements (including agreements for the board's occupation or management of premises in the Tower or elsewhere)¹¹;
- 139 (c) acquire and dispose of land¹² and other property¹³;
- 140 (d) with the consent of the Secretary of State and subject to such conditions as he may impose, make grants to any person for the purpose of promoting enjoyment, knowledge or understanding of arms and armour¹⁴;
- 141 (e) do such things as it thinks necessary or expedient:

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- 14. (i) for preserving, and increasing the utility of, its collection¹⁵;
- 15. (ii) for securing the due administration of anything vested in or acquired by the board, and any premises occupied or managed by it, under or by virtue of the National Heritage Act 1983¹⁶; and
- 16. (iii) otherwise for the purposes of its functions¹⁷;

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- 142 (f) require payment for admission to objects in the board's collection and objects exhibited with them, but only while the objects are exhibited at a place other than the Tower, and require payment for goods or for services other than admission provided by the board¹⁸.

For so long as the board has a right to occupy premises in the Tower, and so far as otherwise practicable, it must secure that an exhibition of arms, armour and associated objects from among its collection is maintained and open to the public in those premises¹⁹. The board may²⁰ allow premises occupied or managed by it to be used by other persons (for payment or otherwise) for purposes not connected with its functions under heads (1) to (5) above, if the board is satisfied that to do so would not conflict unduly with those functions²¹.

The board must make a report to the Secretary of State on the exercise of its functions since the last report was made²², not later than three years (or such shorter period as the Secretary of State may direct) since that last report was made²³. Each report must include a statement of action taken by the board to enable disabled members of the public to use any services or facilities provided by the board²⁴, and a statement of the total amount received by the board by way of admission charges in the period covered by the report²⁵. The Secretary of State must lay a copy of each report before each House of Parliament²⁶.

The board must furnish the Secretary of State with such information relating to its property and the discharge and proposed discharge of its functions as he may require, and for that purpose the board must permit any person authorised by him to inspect and make copies of any accounts or other documents of the board and must give such explanation of them as that person or the Secretary of State may require²⁷.

- 1 As to the board see PARA 876.
- 2 National Heritage Act 1983 s 18(1). As to the vesting of objects in the board see PARA 881.
- 3 National Heritage Act 1983 s 18(2)(a).
- 4 National Heritage Act 1983 s 18(2)(b).
- 5 As to the meaning of 'person' see PARA 803 note 16.
- 6 National Heritage Act 1983 s 18(2)(c).
- 7 National Heritage Act 1983 s 18(2)(d).
- 8 National Heritage Act 1983 s 18(2)(e).
- 9 Ie subject to the provisions of the National Heritage Act 1983: s 18(3), (4).
- 10 National Heritage Act 1983 s 18(3)(a).
- 11 National Heritage Act 1983 s 18(3)(b) (amended by the Museums and Galleries Act 1992 s 11(2), (3), Sch 8 para 13(2), Sch 9).
- 12 As to the meaning of 'land' see PARA 804 note 30.
- 13 National Heritage Act 1983 s 18(3)(c). The board must not acquire or dispose of land without the Secretary of State's consent: s 18(6). As to the Secretary of State see PARA 802 note 2.
- 14 National Heritage Act 1983 s 18(3)(d) (amended by the Museums and Galleries Act 1992 s 11(2), (3), Sch 8 para 13(2), Sch 9).
- 15 National Heritage Act 1983 s 18(4)(a).
- 16 National Heritage Act 1983 s 18(4)(b).
- 17 National Heritage Act 1983 s 18(4)(c).
- 18 See the National Heritage Act 1983 s 18(7).
- 19 National Heritage Act 1983 s 18(5).
- 20 Ie whether or not for the general purposes mentioned in the National Heritage Act 1983 s 18(1): see the text to notes 1-2.
- 21 National Heritage Act 1983 s 18(8) (added by the Museums and Galleries Act 1992 Sch 8 para 13(3)).
- 22 See the National Heritage Act 1983 Sch 1 para 30(1).
- 23 National Heritage Act 1983 Sch 1 para 30(3). The first report was to be made not later than the expiry of the period of three years (or such shorter period as the Secretary of State directed), commencing with the day

of the board's establishment (ie 1 October 1983): see ss 17(1), 41(1), Sch 1 para 30(2); National Heritage Act 1983 (Commencement No 3) Order 1983, SI 1983/1437, art 2(a).

24 National Heritage Act 1983 Sch 1 para 30(5). As to the prohibition against discrimination in the provision of goods, facilities and services to disabled persons see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 582 et seq.

25 National Heritage Act 1983 Sch 1 para 30(6). Such statement must include information, in such detail as the board thinks fit, about rates of, exemptions from and reductions in admission charges made by the board: Sch 1 para 30(6).

26 National Heritage Act 1983 Sch 1 para 30(4). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

27 National Heritage Act 1983 Sch 1 para 30(7). As to accounts see PARA 882.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/I. THE ARMOURIES/879. Power to form companies.

879. Power to form companies.

Without prejudice to any general power¹, the Board of Trustees of the Armouries may, with the consent of the Secretary of State² and subject to any conditions he may impose, form or take part in forming one or more bodies corporate which, or each of which, has as its main object or objects one or more of the following³:

- 143 (1) the production and publication of books, films or other informative material relating to the board's collection and record⁴;
- 144 (2) the production of replicas or reproductions of objects comprised in its collection or of documents forming part of its record, or of souvenirs⁵;
- 145 (3) the sale, whether or not at an hour when the collection is open to the public for viewing, of informative material relating to its collection or record, of replicas or reproductions of objects comprised in its collection or of documents forming part of its record, or of souvenirs or other goods⁶;
- 146 (4) the provision, whether or not at such an hour, of catering or car parking or other services or facilities for the public at any premises occupied or managed by the board⁷; and
- 147 (5) any other object or objects incidental to the board's functions⁸.

The board may hold interests in any such body, exercise rights conferred by the holding of interests in it, and provide financial or other assistance to or in respect of it, including assistance by way of guarantee of its obligations⁹.

1 The National Heritage Act 1983 s 18A is without prejudice to any power of the Board of Trustees of the Armouries to undertake anything mentioned in s 18A(2) (see heads (1)-(5) in the text) by virtue of s 18 (see PARA 878); s 18A(4) (s 18A added by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 13(4)). As to the board see PARA 876.

2 As to the Secretary of State see PARA 802 note 2.

3 National Heritage Act 1983 s 18A(1) (as added: see note 1).

4 National Heritage Act 1983 s 18A(2)(a) (as added: see note 1).

5 National Heritage Act 1983 s 18A(2)(b) (as added: see note 1).

6 National Heritage Act 1983 s 18A(2)(c) (as added: see note 1).

7 National Heritage Act 1983 s 18A(2)(d) (as added: see note 1).

8 National Heritage Act 1983 s 18A(2)(e) (as added: see note 1). As to the board's functions see PARA 878.

9 National Heritage Act 1983 s 18A(3) (as added: see note 1).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/I. THE ARMOURIES/880. Acquisition and disposal of objects.

880. Acquisition and disposal of objects.

The Board of Trustees of the Armouries¹ may acquire (whether by purchase, exchange or gift) any objects which in its opinion it is desirable to add to its collection². Without prejudice to any power apart from this provision, a Minister of the Crown may transfer to the board any object (whether or not he acquired it before the board's establishment) if in his opinion it would appropriately form part of its collection³.

The board may not dispose of an object the property in which is vested in the board and which is comprised in its collection unless:

- 148 (1) the disposal is by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised⁴; or
- 149 (2) the disposal is by way of sale, exchange or gift of an object which in the board's opinion is unsuitable for retention in its collections and can be disposed of without detriment to the interests of students or other members of the public⁵; or
- 150 (3) the disposal is an exercise of the statutory power of transfer⁶; or
- 151 (4) the disposal, by whatever means, including destruction, is of an object which the board is satisfied has become useless for the purposes of its collections by reason of damage, physical deterioration, or infestation by destructive organisms⁷.

Money accruing to the board by virtue of any such disposal must be applied by the board in the acquisition of objects to be added to its collections⁸.

The board is a specified transferor and transferee for the purposes of the general powers of transfer between collections⁹, and a specified body for the purposes of the statutory provision for vesting of gifts to the nation where the donor has not specified a destination¹⁰.

In certain circumstances the board may transfer an object from its collections under the Holocaust (Return of Cultural Objects) Act 2009¹¹.

1 As to the board see PARA 876.

2 National Heritage Act 1983 s 20(1). As to the vesting of objects in the board, and as to the power to lend or borrow objects, see PARA 881.

3 National Heritage Act 1983 s 20(2). The board was established on 1 October 1983: see ss 17(1), 41(1); National Heritage Act 1983 (Commencement No 3) Order 1983, SI 1983/1437, art 2(a).

4 National Heritage Act 1983 s 20(3)(a).

5 National Heritage Act 1983 s 20(3)(b).

6 National Heritage Act 1983 s 20(3)(c) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 13(1)). The statutory power of transfer is that under the Museums and Galleries Act 1992 s 6 (see PARA 820): see the National Heritage Act 1983 s 20(3)(c) (as so amended).

7 National Heritage Act 1983 s 20(3)(d).

8 National Heritage Act 1983 s 20(5). As to finance see PARA 882.

9 See the Museums and Galleries Act 1992 s 6, Sch 5; and PARA 820.

10 See the Museums and Galleries Act 1992 s 7; and PARA 821.

11 See PARA 1103.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/I. THE ARMOURIES/881. Vesting, lending and borrowing of objects.

881. Vesting, lending and borrowing of objects.

Where, immediately before 1 April 1984 (the 'vesting day')¹, the property in an object was vested in the Secretary of State for the Environment² and the object:

- 152 (1) then formed part of the collection of arms, armour and associated objects of the institution known as the Armouries or of their record (including books, pictures and other articles)³; or
- 153 (2) was then in use in respect of the collection or solely for the purposes of the administration of the institution⁴,

then the property on that day became vested instead in the Board of Trustees of the Armouries⁵. On the vesting day any right, power, duty or liability which was immediately before that day exercisable by or incumbent on the Secretary of State for the Environment in relation to any object mentioned in head (1) or (2) above instead became exercisable by or incumbent on the board⁶.

The board may lend any object the property in which is vested in it and which is comprised in its collection, whether or not the loan is for purposes of public exhibition, and whether or not under the terms of the loan the object is to remain in the United Kingdom⁷. In deciding whether or not to lend an object, and in determining the time for which and the conditions subject to which an object is to be lent, the board:

- 154 (a) must give special consideration to a request for the loan of an object for public exhibition⁸; and
- 155 (b) subject to that, must have regard to the interests of students and other persons⁹ visiting the board's collections, the suitability of the prospective borrower, the purpose of the loan, the physical condition and degree of rarity of the object, and any risks to which it is likely to be exposed¹⁰.

Where the property in an object has become vested in the board subject to a condition, this power to lend the object is exercisable in a manner inconsistent with the condition if either (i) 25 years have elapsed since the date on which the condition was first imposed on any person¹¹; or (ii) the person who first imposed the condition or his personal representatives¹² has or have consented in writing¹³ to the exercise of the power in that manner¹⁴.

The board may accept loans of objects for the purpose (depending on the terms of the loan) of exhibiting them, or of study or research by the board or by persons seeking to inspect them¹⁵.

1 See the National Heritage Act 1983 ss 19(6), 41(1); and the National Heritage Act 1983 (Commencement No 4) Order 1984, SI 1984/208.

2 As to the Secretary of State generally see PARA 802 note 2.

3 National Heritage Act 1983 s 19(1)(a). In the case of an object mentioned in s 19(1)(a), it is immaterial that, immediately before the vesting day, it was situated elsewhere than at premises managed for the purposes of the institution (as where it was on loan): s 19(2).

4 National Heritage Act 1983 s 19(1)(b).

5 National Heritage Act 1983 s 19(1). Section 19(1), (3) (see the text to note 6) did not apply as regards an object excepted from those provisions by an order made by the Secretary of State and coming into force before the vesting day: see s 19(4). The power to make an order under s 19(4) was exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: see s 19(5). No such order was made before the vesting day.

6 National Heritage Act 1983 s 19(3). See also note 5.

7 National Heritage Act 1983 s 21(1). As to the meaning of 'United Kingdom' see PARA 804 note 2. As to the government indemnity scheme for loans see PARA 1090. As to loans overseas see PARAS 1091, 1092.

8 National Heritage Act 1983 s 21(2)(a).

9 As to the meaning of 'person' see PARA 803 note 16.

10 National Heritage Act 1983 s 21(2)(b).

11 National Heritage Act 1983 s 21(3)(a).

12 As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.

13 As to the meaning of 'writing' see PARA 805 note 14.

14 National Heritage Act 1983 s 21(3)(b).

15 National Heritage Act 1983 s 21(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/I. THE ARMOURIES/882. Finance and accounts.

882. Finance and accounts.

The Secretary of State¹ may pay to the Board of Trustees of the Armouries², out of money provided by Parliament, such sums towards its expenditure as the Treasury may approve³. The payment may be made on such conditions as the Secretary of State imposes with the Treasury's approval⁴.

The board must keep proper accounts and proper records in relation to them⁵, and must prepare a statement of accounts in respect of each financial year⁶. The statement must give a true and fair view of the state of the board's affairs at the end of the financial year and of the board's income and expenditure in the financial year⁷; and it must comply with any directions given by the Secretary of State with the Treasury's consent as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared⁸. The board must send the statement to the Secretary of State at such time as he may direct⁹ and the Secretary of State must, on or before 31 August in any year, send to the Comptroller and Auditor General the statement prepared by the board under these provisions for the financial year last ended¹⁰. The Comptroller and Auditor General must examine, certify and report on the statement so sent to him and must lay copies of it and of his report before each House of Parliament¹¹.

1 As to the Secretary of State see PARA 802 note 2.

2 As to the board see PARA 876.

3 National Heritage Act 1983 s 22(1). As to the meaning of 'Treasury' see PARA 809 note 4. As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804.

4 National Heritage Act 1983 s 22(2).

5 National Heritage Act 1983 Sch 1 para 29(1).

6 National Heritage Act 1983 Sch 1 para 29(2). 'Financial year' means the period commencing with the day of the board's establishment and ending with the second 31 March following that day, and each successive period of 12 months: Sch 1 para 29(8). The board was established on 1 October 1983: see ss 17(1), 41(1); National Heritage Act 1983 (Commencement No 3) Order 1983, SI 1983/1437, art 2(a). As to the meaning of 'month' see PARA 803 note 11.

7 National Heritage Act 1983 Sch 1 para 29(3).

8 National Heritage Act 1983 Sch 1 para 29(4).

9 National Heritage Act 1983 Sch 1 para 29(5).

10 National Heritage Act 1983 Sch 1 para 29(6). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

11 National Heritage Act 1983 Sch 1 para 29(7). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/J. THE ROYAL BOTANIC GARDENS, KEW/883. The Board of Trustees.

J. THE ROYAL BOTANIC GARDENS, KEW

883. The Board of Trustees.

There is a body known as the Board of Trustees of the Royal Botanic Gardens, Kew¹. The board is a body corporate². The board is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown³, the trustees and their staff are not to be regarded as civil servants and the board's property is not to be regarded as property of, or held on behalf of, the Crown⁴. Subject to the provisions of any enactment⁵, the board is not exempt from any tax, duty, rate, levy or other charge whatever (whether general or local)⁶.

The board may regulate its own procedure⁷, and may make arrangements for any of its functions, other than the power to acquire or dispose of land⁸, to be discharged by committees⁹. The validity of any proceedings of the board is not affected by any vacancy among the trustees or by any defect in the appointment of any trustee¹⁰.

The fixing of the seal of the board must be authenticated by the signature of the chairman or of some other person authorised either generally or specially by the board to act for that purpose¹¹. A document purporting to be duly executed under the seal of the board, or to be signed on the board's behalf, is receivable in evidence and, unless the contrary is proved, is deemed to be so executed or signed¹².

1 National Heritage Act 1983 s 23(1). As to the membership of the board see Sch 1 para 33 (Sch 1 paras 33, 37 amended by SI 2002/794). As to the payment of allowances to the trustees and members of committees see Sch 1 para 37 (as so amended). The board, so far as it is a charity, and any institution which is administered by or on its behalf and established for general or special purposes, is an exempt charity for the purposes of the Charities Act 1993: see ss 3, 96(1), Sch 2; and **CHARITIES** vol 8 (2010) PARA 315. The board is a designated body for the purposes of the Natural Environment and Rural Communities Act 2006 Pt 8 Ch 1 (ss 78-86) with which the Secretary of State may enter into an agreement authorising it to perform certain ministerial functions: see s 80, Sch 7 para 5; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 520.

2 National Heritage Act 1983 Sch 1 para 31. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 2; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1101 et seq.

3 National Heritage Act 1983 Sch 1 para 32(1). However, in relation to any matter as respects which the board acts by virtue of a direction of a Minister of the Crown under s 24(5) (see PARA 885), the board enjoys the same privileges, immunities and exemptions as those enjoyed in relation to that matter by the minister giving the direction: see Sch 1 para 32(3). As to the legal status of bodies not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

4 National Heritage Act 1983 Sch 1 para 32(2). As to the power of the board to appoint staff see PARA 884. As to the civil service see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 549 et seq.

5 As to the meaning of 'enactment' see PARA 805 note 5.

6 National Heritage Act 1983 Sch 1 para 32(4) (amended by the Local Government and Rating Act 1997 s 33(1), Sch 3 para 18(5)(a)).

7 See the National Heritage Act 1983 Sch 1 para 36(1). As to quorum see Sch 1 para 36(1), (7).

8 As to the meaning of 'land' see PARA 804 note 30.

9 See the National Heritage Act 1983 Sch 1 para 36(2)-(6). As to the board's functions see PARA 885.

10 National Heritage Act 1983 Sch 1 para 36(8).

11 National Heritage Act 1983 Sch 1 para 38(1). As to the corporate seal see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1122 et seq.

12 National Heritage Act 1983 Sch 1 para 38(2). Certain records of the board are public records for the purposes of the Public Records Act 1958: see s 10, Sch 1 para 3, Table Pt II; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 835.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/J. THE ROYAL BOTANIC GARDENS, KEW/884. Director and staff.

884. Director and staff.

There is a director of the Royal Botanic Gardens, Kew who is appointed by the Board of Trustees of the Royal Botanic Gardens¹ with the approval of the Secretary of State². The director is responsible to the board for the general exercise of the board's functions³.

The board may appoint such other employees as it thinks fit⁴ and must pay to them such remuneration and allowances as it may determine⁵. The employees are appointed on such other terms and conditions as the board may determine⁶.

1 As to the board see PARA 883.

2 National Heritage Act 1983 Sch 1 para 34(1) (Sch 1 para 34(1), (6) amended by SI 2002/794). As to the Secretary of State see PARA 802 note 2.

3 National Heritage Act 1983 Sch 1 para 34(2). As to the functions of the board see PARA 885.

4 National Heritage Act 1983 Sch 1 para 34(3).

5 National Heritage Act 1983 Sch 1 para 34(4). A determination under Sch 1 para 34(4) or (5) (see the text to note 6) is ineffective unless made with the approval of the Secretary of State given with the Treasury's consent: Sch 1 para 34(6) (as amended: see note 2). As to the meaning of 'Treasury' see PARA 809 note 4.

6 National Heritage Act 1983 Sch 1 para 34(5). See also note 5. Employment with the board is included among the kinds of employment to which a scheme under the Superannuation Act 1972 s 1 can apply: National Heritage Act 1983 Sch 1 para 34(7). See further PARA 896. As to the provision made in respect of the employment by the board of staff formerly employed in the civil service for the purposes of the Royal Botanic Gardens see Sch 1 para 35 (amended by the Employment Rights Act 1996 s 240, Sch 1 para 23; Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/J. THE ROYAL BOTANIC GARDENS, KEW/885. General functions of the Board of Trustees.

885. General functions of the Board of Trustees.

So far as practicable and subject to the provisions of the National Heritage Act 1983, the Board of Trustees of the Royal Botanic Gardens, Kew¹ must:

- 156 (1) carry out investigation and research into the science of plants and related subjects, and disseminate the results of the investigation and research²;
- 157 (2) provide advice, instruction and education in relation to those aspects of the science of plants with which the board is for the time being in fact concerned³;
- 158 (3) provide other services (including quarantine) in relation to plants⁴;
- 159 (4) care for their collections of plants, preserved plant material, other objects relating to plants, books and records⁵;
- 160 (5) keep the collections as national reference collections, secure that they are available to persons⁶ for the purposes of study, and add to and adapt them as scientific needs and the board's resources allow⁷; and
- 161 (6) afford to members of the public opportunities to enter any land⁸ occupied or managed by the board, for the purpose of gaining knowledge and enjoyment from the board's collections⁹.

For these purposes, the board may¹⁰:

- 162 (a) enter into contracts and other agreements (including agreements for the board's occupation or management of land)¹¹;
- 163 (b) acquire and dispose of land and other property¹²;
- 164 (c) require payment for any advice, instruction, education or other service provided by the board or for any goods provided by the board or for entry to any land occupied or managed by the board¹³;
- 165 (d) do such things as it thinks necessary or expedient:

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- 17. (i) for preserving, and increasing the utility of, its collections¹⁴;
- 18. (ii) for securing the due administration of anything vested in or acquired by the board, and any land occupied or managed by it, under or by virtue of the National Heritage Act 1983¹⁵; and
- 19. (iii) otherwise for the purposes of its functions¹⁶.

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If a Minister of the Crown directs the board to exercise functions which are exercisable by him (whether by virtue of an enactment¹⁷ or otherwise) in relation to the management of Kew Gardens or other land and which in his opinion can appropriately be exercised by the board having regard to its functions and resources¹⁸, and which are specified in the direction, the board must exercise them on his behalf in such manner as he may from time to time direct¹⁹.

The board's name is not to be taken to confine its activities to Kew²⁰.

The board must make a report to the Secretary of State on the exercise of its functions since the last report was made²¹, not later than three years (or such shorter period as the Secretary of State may direct) since the last report was made²². Each report must include a statement of action taken by the board to enable disabled members of the public to use any services or

facilities provided by the board²³. The Secretary of State must lay a copy of each report before each House of Parliament²⁴.

The board must furnish the Secretary of State with such information relating to its property and the discharge and proposed discharge of its functions as he may require, and for that purpose the board must permit any person authorised by him to inspect and make copies of any accounts or other documents of the board and must give such explanation of them as that person or the minister may require²⁵.

- 1 As to the board see PARA 883.
- 2 National Heritage Act 1983 s 24(1)(a).
- 3 National Heritage Act 1983 s 24(1)(b).
- 4 National Heritage Act 1983 s 24(1)(c).
- 5 National Heritage Act 1983 s 24(1)(d).
- 6 As to the meaning of 'person' see PARA 803 note 16.
- 7 National Heritage Act 1983 s 24(1)(e).
- 8 As to the meaning of 'land' see PARA 804 note 30.
- 9 National Heritage Act 1983 s 24(1)(f).
- 10 In subject to the provisions of the National Heritage Act 1983: see s 24(2), (3).
- 11 National Heritage Act 1983 s 24(2)(a).
- 12 National Heritage Act 1983 s 24(2)(b). The board may not acquire or dispose of land without the consent of the Secretary of State; but that restriction does not apply to the grant of a lease of, or a licence or concession in respect of, land if the term of the proposed grant is less than one year: s 24(6) (amended by SI 2002/794). As to the Secretary of State see PARA 802 note 2.
- 13 National Heritage Act 1983 s 24(2)(c).
- 14 National Heritage Act 1983 s 24(3)(a).
- 15 National Heritage Act 1983 s 24(3)(b). As to the vesting of property in the board see PARA 888.
- 16 National Heritage Act 1983 s 24(3)(c).
- 17 As to the meaning of 'enactment' see PARA 805 note 5.
- 18 See the National Heritage Act 1983 s 24(4).
- 19 See the National Heritage Act 1983 s 24(5). However, nothing in this provision authorises the board to exercise a function of making regulations or other instruments of a legislative character: see s 24(5). In relation to any matter as respects which the board acts by virtue of a direction under s 24(5), it enjoys the same privileges, immunities and exemptions as those enjoyed in relation to that matter by the minister giving the direction: see Sch 1 para 32(3); and PARA 883.
- 20 National Heritage Act 1983 s 24(9).
- 21 See the National Heritage Act 1983 Sch 1 para 40(1) (Sch 1 para 40 amended by SI 2002/794).
- 22 See the National Heritage Act 1983 Sch 1 para 40(3) (as amended: see note 21). The first report was to be made not later than the expiry of the period of three years (or such shorter period as the Minister of Agriculture, Fisheries and Food directed), commencing with the day of the board's establishment: Sch 1 para 40(2). The board was established on 8 August 1983: see ss 23(1), 41(1); National Heritage Act 1983 (Commencement No 2) Order 1983, SI 1983/1183, art 2(a).
- 23 National Heritage Act 1983 Sch 1 para 40(5). As to the prohibition against discrimination in the provision of goods, facilities and services to disabled persons see DISCRIMINATION vol 13 (2007 Reissue) PARA 582 et seq.

24 National Heritage Act 1983 Sch 1 para 40(4) (as amended: see note 21). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

25 National Heritage Act 1983 Sch 1 para 40(6) (as amended: see note 21). As to accounts see PARA 889.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/J. THE ROYAL BOTANIC GARDENS, KEW/886. Power to form companies.

886. Power to form companies.

Without prejudice to any general power¹, the Board of Trustees of the Royal Botanic Gardens, Kew may, with the consent of the Secretary of State² and subject to any conditions he may impose, form or take part in forming one or more bodies corporate which, or each of which, has as its main object or objects one or more of the following³:

- 166 (1) the production and publication of books, films or other informative material relating to the science of plants or related subjects or to the board and its functions⁴;
- 167 (2) the production of souvenirs relating to plants or to the board's activities⁵;
- 168 (3) the sale of plants produced by the board or objects relating to plants, of informative material relating to the science of plants or related subjects, or of souvenirs relating to plants or to the board's activities⁶; and
- 169 (4) the provision of catering or car parking or other services or facilities for the public at any land⁷ occupied or managed by the board⁸.

The board may hold interests in any such body, exercise rights conferred by the holding of interests in it, and provide financial or other assistance to or in respect of it, including assistance by way of guarantee of its obligations⁹.

1 The National Heritage Act 1983 s 25 is without prejudice to any power of the Board of Trustees of the Royal Botanic Gardens, Kew to undertake anything mentioned in s 25(2) (see heads (1)-(4) in the text) by virtue of s 24 (see PARA 885): s 25(4). As to the board see PARA 883.

2 As to the Secretary of State see PARA 802 note 2.

3 National Heritage Act 1983 s 25(1).

4 National Heritage Act 1983 s 25(2)(a). As to the board's functions see PARA 885.

5 National Heritage Act 1983 s 25(2)(b).

6 National Heritage Act 1983 s 25(2)(c).

7 As to the meaning of 'land' see PARA 804 note 30.

8 National Heritage Act 1983 s 25(2)(d).

9 National Heritage Act 1983 s 25(3).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/J. THE ROYAL BOTANIC GARDENS, KEW/887. Acquisition and disposal of objects.

887. Acquisition and disposal of objects.

The Board of Trustees of the Royal Botanic Gardens, Kew¹ may acquire (whether by purchase, exchange or gift) any objects which in its opinion it is desirable to add to its collections².

The board may not dispose of an object the property in which is vested in the board and which is comprised in its collections unless:

- 170 (1) the disposal is by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised³; or
- 171 (2) the disposal is by way of sale, exchange or gift of an object which in the board's opinion is unsuitable for retention in its collections and can be disposed of without detriment to the interests of students or other members of the public⁴; or
- 172 (3) the disposal, by whatever means, including destruction, is of an object which the board is satisfied has become useless for the purposes of its collections by reason of damage, physical deterioration, or infestation by destructive organisms⁵.

In certain circumstances the board may transfer an object from its collections under the Holocaust (Return of Cultural Objects) Act 2009⁶.

1 As to the board see PARA 883.

2 National Heritage Act 1983 s 27(1). As to the vesting of property in the board see PARA 888. As to the functions of the board see PARA 885.

3 National Heritage Act 1983 s 27(2)(a).

4 National Heritage Act 1983 s 27(2)(b).

5 National Heritage Act 1983 s 27(2)(c). An object may be disposed of as mentioned in this provision notwithstanding a trust or condition, express or implied, prohibiting or restricting the disposal of the object: s 27(3).

6 See PARA 1103.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/J. THE ROYAL BOTANIC GARDENS, KEW/888. Vesting, lending and borrowing of objects.

888. Vesting, lending and borrowing of objects.

Where, immediately before 1 April 1984 (the 'vesting day')¹, the property in an object was vested in the Minister of Agriculture, Fisheries and Food and the object:

- 173 (1) then formed part of the collections of plants (other than those growing in land²), preserved plant material, other objects relating to plants, or books or records, of the institution known as the Royal Botanic Gardens³; or
- 174 (2) was then in use in respect of the collections or solely for the purposes of the administration of the institution⁴,

then the property on that day became vested instead in the Board of Trustees of the Royal Botanic Gardens, Kew⁵. On the vesting day any right, power, duty or liability which was immediately before that day exercisable by or incumbent on the minister in relation to any object mentioned in head (1) or (2) above instead became exercisable by or incumbent on the board⁶.

The board may lend any object the property in which is vested in it and which is comprised in its collections, whether or not the loan is for purposes of public exhibition, and whether or not under the terms of the loan the object is to remain in the United Kingdom⁷. In deciding whether or not to lend an object, and in determining the time for which and the conditions subject to which an object is to be lent, the board:

- 175 (1) must give special consideration to a request for the loan of an object for public exhibition⁸; and
- 176 (2) subject to that, must have regard to the interests of students and other persons⁹ visiting the board's collections, the suitability of the prospective borrower, the purpose of the loan, the physical condition and degree of rarity of the object, and any risks to which it is likely to be exposed¹⁰.

The board may accept loans of objects for the purpose (depending on the terms of the loan) of exhibiting them, or of study or research by the board or by persons seeking to inspect them¹¹.

1 See the National Heritage Act 1983 ss 26(4), 41(1); and the National Heritage Act 1983 (Commencement No 5) Order 1984, SI 1984/217.

2 As to the meaning of 'land' see PARA 804 note 30.

3 National Heritage Act 1983 s 26(1)(a). In the case of an object mentioned in this provision, it is immaterial that, immediately before the vesting day, it was situated elsewhere than at premises managed for the purposes of the institution (as where it was on loan): s 26(2).

4 National Heritage Act 1983 s 26(1)(b).

5 National Heritage Act 1983 s 26(1). As to the board see PARA 883.

6 National Heritage Act 1983 s 26(3).

7 National Heritage Act 1983 s 28(1). As to the meaning of 'United Kingdom' see PARA 804 note 2. As to the government indemnity scheme for loans see PARA 1090. As to loans overseas see PARAS 1091, 1092.

- 8 National Heritage Act 1983 s 28(2)(a).
- 9 As to the meaning of 'person' see PARA 803 note 16.
- 10 National Heritage Act 1983 s 28(2)(b).
- 11 National Heritage Act 1983 s 28(3).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/J. THE ROYAL BOTANIC GARDENS, KEW/889. Finance and accounts.

889. Finance and accounts.

The Secretary of State¹ may pay to the Board of Trustees of the Royal Botanic Gardens, Kew², out of money provided by Parliament, such sums towards its expenditure as the Treasury may approve³. The payment may be made on such conditions as the Secretary of State imposes with the Treasury's approval⁴.

The board must keep proper accounts and proper records in relation to them⁵ and must prepare a statement of accounts in respect of each financial year⁶. The statement must give a true and fair view of the state of the board's affairs at the end of the financial year and of the board's income and expenditure in the financial year⁷; and it must comply with any directions given by the Secretary of State with the Treasury's consent as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared⁸. The board must send the statement to the Secretary of State at such time as he may direct⁹, and the Secretary of State must, on or before 31 August in any year, send to the Comptroller and Auditor General the statement prepared by the board under these provisions for the financial year last ended¹⁰. The Comptroller and Auditor General must examine, certify and report on the statement so sent to him and must lay copies of it and of his report before each House of Parliament¹¹.

1 As to the Secretary of State see PARA 802 note 2.

2 As to the board see PARA 883.

3 National Heritage Act 1983 s 29(1) (s 29, Sch 1 para 39 amended by SI 2002/794). As to the meaning of 'Treasury' see PARA 809 note 4. As to the provision of money by Parliament see PARLIAMENT vol 78 (2010) PARA 804.

4 National Heritage Act 1983 s 29(2) (as amended: see note 3).

5 National Heritage Act 1983 Sch 1 para 39(1).

6 National Heritage Act 1983 Sch 1 para 39(2). 'Financial year' means the period commencing with the day of the board's establishment and ending with the second 31 March following that day, and each successive period of 12 months: Sch 1 para 39(8). As to the meaning of 'month' see PARA 803 note 11. The board was established on 8 August 1983: see ss 23(1), 41(1); National Heritage Act 1983 (Commencement No 2) Order 1983, SI 1983/1183, art 2(a).

7 National Heritage Act 1983 Sch 1 para 39(3).

8 National Heritage Act 1983 Sch 1 para 39(4) (as amended: see note 3).

9 National Heritage Act 1983 Sch 1 para 39(5) (as amended: see note 3).

10 National Heritage Act 1983 Sch 1 para 39(6) (as amended: see note 3). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

11 National Heritage Act 1983 Sch 1 para 39(7). As to laying documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/K. ARMED FORCES MUSEUMS/890. In general.

K. ARMED FORCES MUSEUMS

890. In general.

In relation to any institution which has as its object, or as one of its main objects, the collection, exhibition or retention of articles relating to the history and traditions of some section of the armed forces of the Crown¹, the Secretary of State² may out of money provided by Parliament pay to the governing body of any such institution such sums towards its expenditure as the Treasury may approve³. The payment may be made on such conditions as the Secretary of State imposes with the Treasury's approval⁴.

The Secretary of State may designate by order⁵ any such institution which, immediately before the making of the order, was staffed by persons at least one of whom was employed in the civil service of the state⁶.

The following institutions have been designated under these provisions:

- 177 (1) The Council of the National Army Museum⁷;
- 178 (2) the Royal Air Force Museum⁸;
- 179 (3) the Portsmouth Royal Naval Museum and the Submarine Branch Collection⁹;
- 180 (4) the Fleet Air Arm Museum¹⁰; and
- 181 (5) the Royal Marine Corps Museum¹¹.

1 National Heritage Act 1983 s 30(1).

2 As to the Secretary of State see PARA 802 note 2.

3 National Heritage Act 1983 s 30(2). As to the meaning of 'Treasury' see PARA 809 note 4. As to the provision of money by Parliament see PARLIAMENT vol 78 (2010) PARA 804.

4 National Heritage Act 1983 s 30(3).

5 See the National Heritage Act 1983 s 31(1). The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 31(3). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516. As to the orders made see notes 7-11.

6 See the National Heritage Act 1983 s 31(2). Not later than such date as the Secretary of State determines, the governing body of a designated institution must make an offer of employment by the body concerned to each person employed immediately before that date in the civil service of the state for the purposes of the institution concerned (Sch 2 paras 1, 2(1)), on terms which, taken as a whole, are not less favourable to the person to whom the offer is made than the terms on which he is employed at the date on which the offer is made (Sch 2 para 2(2)). The offer is not revocable during the period of three months commencing with the date on which it is made Sch 2 para 2(4). As to the meaning of 'month' see PARA 803 note 11. As to the civil service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 549 et seq.

In determining whether the terms of the offer are any more or less favourable to that person than those enjoyed by him on the date of the offer, no account may be taken of the fact that employment with the body is not employment in the service of the Crown: Sch 2 para 2(3). Any dispute arising under this provision as to whether or not the terms of any employment offered by a body are, taken as a whole, less favourable than those applying to a person's employment in the civil service of the state must be referred to and determined by an employment tribunal: Sch 2 para 2(6) (Sch 2 para 2(6)-(8) amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)). An employment tribunal may not consider a complaint whereby such a dispute is referred to it unless the complaint is presented to the tribunal before the end of the period of three months beginning with the date of the offer of employment or within such further period as the tribunal considers

reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months: National Heritage Act 1983 Sch 2 para 2(7) (as so amended). An appeal lies to the Employment Appeal Tribunal on a question of law arising from any decision of, or arising in proceedings before, an employment tribunal under this provision; and no appeal lies except to the Employment Appeal Tribunal from any decision of an employment tribunal under this provision: Sch 2 para 2(8) (as so amended). As to employment tribunals and the Employment Appeal Tribunal see **EMPLOYMENT** vol 41 (2009) PARA 1363 et seq.

Where a person becomes an employee of the governing body of a designated institution in consequence of these provisions, then, for the purposes of the Employment Rights Act 1996, his period of employment in the civil service of the state counts as a period of employment by the body and the change of employment does not break the continuity of the period of employment: Sch 2 para 2(5) (amended by the Employment Rights Act 1996 s 240, Sch 1 para 23). Employment with the governing body of a designated institution is included among the kinds of employment to which a pension scheme under the Superannuation Act 1972 (see PARA 896) can apply: see the National Heritage Act 1983 Sch 2 para 3. As to continuity of employment see **EMPLOYMENT** vol 39 (2009) PARA 105 et seq.

- 7 See the Armed Forces Museums (Designation of Institutions) Order 1983, SI 1983/1780, art 2.
- 8 See the Armed Forces Museums (Designation of Institutions) Order 1984, SI 1984/422, art 2.
- 9 See the Armed Forces Museums (Designation of Institutions) (No 2) Order 1984, SI 1984/1850, art 2.
- 10 See the Armed Forces Museums (Designation of Institutions) Order 1985, SI 1985/1818, art 2.
- 11 See the Armed Forces Museums (Designation of Institutions) Order 1987, SI 1987/1945, art 2.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/K. ARMED FORCES MUSEUMS/891. Grants for the preservation of the Royal Naval College site.

891. Grants for the preservation of the Royal Naval College site.

The Secretary of State¹ may out of money provided by Parliament² make grants towards expenditure in connection with the repair or maintenance of the land³ and buildings on the site known as the Royal Naval College⁴, or any object of historical interest situated on that land or in those buildings⁵. Any such grants made may be paid to such persons⁶ and on such conditions as the Secretary of State considers appropriate⁷.

- 1 As to the Secretary of State see PARA 802 note 2.
- 2 As to the provision of money by Parliament see PARLIAMENT vol 78 (2010) PARA 804.
- 3 As to the meaning of 'land' see PARA 804 note 30.
- 4 National Heritage Act 1983 s 31A(1)(a) (s 31A added by the Armed Forces Act 1996 s 31).
- 5 National Heritage Act 1983 s 31A(1)(b) (as added: see note 4).
- 6 As to the meaning of 'person' see PARA 803 note 16.
- 7 National Heritage Act 1983 s 31A(2) (as added: see note 4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/L. THE NATIONAL MUSEUM OF WALES/892. Establishment and objects.

L. THE NATIONAL MUSEUM OF WALES

892. Establishment and objects.

The National Museum of Wales is a body corporate with perpetual succession and a common seal with power to sue and be sued and to do all other matters and things incidental or appertaining to a body corporate¹. There is a board of trustees of the museum² which is the governing body of the museum responsible for the management and administration of the finances and property of the museum³.

The objects of the museum are the advancement of the education of the public: (1) primarily, by the comprehensive representation of science, art, industry, history and culture of, or relevant to, Wales; and (2) generally, by the collection, recording, preservation, elucidation and presentation of objects and things and associated knowledge, whether connected or not with Wales, which are calculated to further the enhancement of understanding and the promotion of research⁴.

There is a chief executive of the museum who is responsible for the management and administration of the museum on behalf of the Trustees⁵.

Every year, the Welsh Assembly Government issues the museum with a remit letter setting out the museum's role in relation to the government's strategic agenda, including details of the priorities and outputs expected as well as how much funding will be provided⁶.

1 Supplemental Charter of the National Museum of Wales, 2006, art 1. The museum was originally incorporated by royal charter in 1907. The museum operates seven sites: National Museum, Cardiff; St Fagans National History Museum; National Slate Museum, Llanberis; Big Pit: National Coal Museum, Blaenafon; National Wool Museum, Dre-fach Felindre, Carmarthenshire; National Roman Legion Museum, Caerleon; National Waterfront Museum, Swansea. The Welsh Assembly Government introduced free entry to national museums in April 2001. As to the Welsh Assembly Government see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 Supplemental Charter of the National Museum of Wales, 2006, art 3.

3 See the Supplemental Charter of the National Museum of Wales, 2006, art 6.

4 Supplemental Charter of the National Museum of Wales, 2006, art 4.

5 See the Supplemental Charter of the National Museum of Wales, 2006, art 7.

6 A copy of the remit letter is available on the Welsh Assembly Government website at www.new.wales.gov.uk.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iii) Particular Institutions/M. THE COMMONWEALTH INSTITUTE/893. The Commonwealth Institute.

M. THE COMMONWEALTH INSTITUTE

893. The Commonwealth Institute.

The Commonwealth Institute was the successor to the Imperial Institute¹ which was incorporated in 1888² and reconstituted in 1925³. On 7 January 2003⁴ the enactments⁵ which made provision in connection with the management of the Commonwealth Institute ceased to have effect⁶, and the money constituting the capital of the endowment fund⁷ was transferred to and became vested in a company limited by guarantee known as the Commonwealth Institute free from any restrictions as to the purposes for which it must be held⁸.

The Commonwealth Institute has been succeeded by the Commonwealth Education Trust, a charity registered in England and Wales, which has been established to ensure that the assets of the Commonwealth Institute are protected and are applied in a manner that is congruent with the purposes of the original trust which has its origins in the donations first made by individual citizens of the now Commonwealth to the Prince of Wales in 1886 in celebration of the Golden Jubilee of Queen Victoria⁹. The objects of the trust are to advance education in the Commonwealth, and the focus of the work of the trust is on supporting primary and secondary education and the training and development of teachers across the Commonwealth¹⁰.

1 See the Commonwealth Institute Act 1958 s 1(1) (repealed).

2 Incorporation was by royal charter dated 12 May 1888, and administration was regulated by the Imperial Institute (Transfer) Act 1902 (repealed): see the Imperial Institute Act 1925, preamble.

3 See the Imperial Institute Act 1925 s 1 (repealed).

4 See the Commonwealth Act 2002 ss 1, 4(2).

5 Re the Imperial Institute Act 1925 and the Commonwealth Institute Act 1958: Commonwealth Act 2002 s 1(1)(a), (b).

6 See the Commonwealth Act 2002 s 1(1).

7 Re the fund referred to by that name in the Imperial Institute Act 1925: Commonwealth Act 2002 s 1(3).

8 Commonwealth Act 2002 s 1(2). As to companies limited by guarantee see **COMPANIES** vol 14 (2009) PARAS 79, 102.

9 See the website of the Commonwealth Education Trust at www.cet1886.org. As to the Commonwealth see **CWOMMONWEALTH** vol 13 (2009) PARA 701.

10 See the website of the Commonwealth Education Trust at www.cet1886.org.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(iv) Local Authority Museums and Art Galleries/894. Museums and art galleries generally.

(iv) Local Authority Museums and Art Galleries

894. Museums and art galleries generally.

A local authority¹ may provide and maintain museums and art galleries within its administrative area or elsewhere in England or Wales², and may do all such things as may be necessary or expedient for or in connection with their provision or maintenance³. A local authority so maintaining a museum or art gallery may enter into an agreement with any other local authority empowered to maintain it for the transfer of the museum or gallery and its collections to that authority⁴.

A local authority may make a charge for admission to a museum or art gallery maintained under these provisions⁵. In determining whether, and in what manner, to exercise its powers to make such a charge, the authority must take into account the need to secure that the museum or gallery plays its full part in the promotion of education in the area, and must have particular regard to the interests of children and students⁶. A local authority maintaining museum or art gallery premises may use the premises or allow them to be used (whether or not in return for payment) for the holding of meetings and exhibitions, the showing of films and slides, the giving of musical performances and the holding of other events of an educational or cultural nature and in connection therewith may make or authorise the making of a charge for admission⁷.

A local authority may make byelaws regulating the use of facilities provided by the authority and the conduct of persons⁸ in the premises where those facilities are provided⁹. A local authority¹⁰ may make contributions towards expense incurred by any person (1) in providing or maintaining a museum or art gallery in any place within England or Wales¹¹; or (2) in providing advisory or other services or financial assistance for the benefit of a museum or art gallery in any such place¹².

A local authority maintaining or proposing to provide a museum or art gallery under these provisions may establish a fund to be used for the purchase of objects for exhibition in any museum or art gallery which it maintains or proposes to provide¹³. Where at the time such a fund is established, a local authority maintains under a local Act¹⁴ a fund which it is authorised to use for the purchase of such objects, it may amalgamate the funds, but without prejudice to the effect of any condition attached to any particular gift received by the authority¹⁵. The following provisions apply with respect to the management of a fund so established¹⁶:

- 182 (a) no payment may be made into the fund (the 'art fund') unless it is authorised or required to be made by these provisions¹⁷;
- 183 (b) there may be paid into the art fund from the county fund, council fund or, as the case may be, the general fund or, in the case of the Common Council of the City of London, the City fund, such sums as the local authority determines¹⁸;
- 184 (c) where any object previously kept for exhibition in a museum or art gallery maintained by the local authority is sold by it, and the proceeds of sale are not subject to any trust the terms of which prevent their being used for the purchase of other objects for exhibition either in that museum or gallery or in any other museum or art gallery for the time being so maintained, the proceeds of sale or any part of them may be paid into the art fund¹⁹;

- 185 (d) until it is required for the purposes of the art fund, money in the fund may be invested by the local authority in the same investments as trustees are for the time being by law authorised to make²⁰;
- 186 (e) income made from investments so made must be carried to the county fund, council fund or the general fund, or, in the case of the Common Council of the City of London, the City fund as the case may be, and an equivalent sum must be paid from that fund into the art fund²¹.

A local authority museum or art gallery is an eligible recipient for a grant or loan from the trustees for the National Heritage Fund in accordance with the provisions of the National Heritage Act 1980 and the trustees may also apply the fund for purposes connected with the acquisition, maintenance or preservation of property for purposes specified in the Act²². A local authority museum or art gallery comes within the government indemnity scheme for loans of objects to other institutions²³.

- 1 As to the meaning of 'local authority' see PARA 926.
- 2 As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4.
- 3 Public Libraries and Museums Act 1964 s 12(1) (amended by the Local Government Act 1972 s 272(1), Sch 30). It is not necessary for a local authority to obtain the consent of the Secretary of State or, in relation to Wales, the Welsh Ministers to the provision of a museum or art gallery under s 12(1) or to the transfer of a museum or art gallery and its collections under s 12(2) (see the text to note 4): see the Local Government Act 1972 s 208(1); National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 Sch 11 para 30. As to the Secretary of State and the Welsh Ministers see PARA 802.
- 4 Public Libraries and Museums Act 1964 s 12(2). See also note 3.
- 5 Public Libraries and Museums Act 1964 s 13(1).
- 6 Public Libraries and Museums Act 1964 s 13(2).
- 7 Public Libraries and Museums Act 1964 s 20.
- 8 As to the meaning of 'person' see PARA 803 note 16.
- 9 See the Public Libraries and Museums Act 1964 s 19; and PARA 934.
- 10 The powers conferred by the Public Libraries and Museums Act 1964 s 14 are exercisable by every local authority whether or not it is a library authority or maintains a museum or art gallery: see the Local Government Act 1972 s 208(2). As to the meaning of 'library authority' see PARA 926.
- 11 Public Libraries and Museums Act 1964 s 14(a) (s 14 amended by the Local Government Act 1972 Sch 30).
- 12 Public Libraries and Museums Act 1964 s 14(b).
- 13 Public Libraries and Museums Act 1964 s 15(1) (s 15(1), (2) amended by the Local Government Act 1972 s 208(3)(g)).
- 14 As to local Acts see **STATUTES** vol 44(1) (Reissue) PARA 1213.
- 15 Public Libraries and Museums Act 1964 s 15(2) (as amended: see note 13). It is not necessary for the local authority to apply to the Secretary of State or, in relation to Wales, the Welsh Ministers for an order before amalgamating the funds: see the Local Government Act 1972 s 208(1); National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 Sch 11 para 30.
- 16 See the Public Libraries and Museums Act 1964 s 15(3).
- 17 Public Libraries and Museums Act 1964 Sch 2 para 1.

18 Public Libraries and Museums Act 1964 Sch 2 para 2(1) (amended by the Local Government Act 1972 s 208(3)(k), Sch 30; SI 1990/1285; Local Government (Wales) Act 1994 s 66(6), Sch 16 para 24(4)). As to the county, council, general and City funds see generally **LOCAL GOVERNMENT** vol 29(1) (2001 Reissue) PARA 545 et seq.

19 Public Libraries and Museums Act 1964 Sch 2 para 3.

20 Public Libraries and Museums Act 1964 Sch 2 para 4. For this purpose, the Trustee Investments Act 1961 s 7 (which applies ss 1-6 to persons, other than trustees, having trustee investment powers: see **TRUSTS** vol 48 (2007 Reissue) PARA 1019 et seq) has effect as if the Public Libraries and Museums Act 1964 had been passed before the 1961 Act, provided that, for the purpose of the making of investments by the authority, the Trustee Investments Act 1961 s 1(1), Sch 1 Pt II para 9 does not apply to the authority or a joint board comprising the authority and established under the Public Libraries and Museums Act 1964 s 5 (see PARA 927): Sch 2 para 4.

21 Public Libraries and Museums Act 1964 Sch 2 para 5 (amended by SI 1990/1285; the Local Government (Wales) Act 1994 Sch 16 para 24(4)).

22 See the National Heritage Act 1980 ss 3, 4; and PARA 816.

23 See the National Heritage Act 1980 s 16; and PARA 1090.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(v) Finance, Accounts and Staff Pensions/895. Finance and accounts.

(v) Finance, Accounts and Staff Pensions

895. Finance and accounts.

The Secretary of State¹ may out of money provided by Parliament pay to specified bodies² such sums towards their expenditure as the Treasury may approve³. Each of the specified bodies must keep proper accounts and proper records in relation to those accounts⁴, and must prepare a statement of accounts in respect of each financial year⁵ which must give a true and fair view of the state of the body's affairs at the end of the financial year and of the body's income and expenditure in the financial year⁶. The statement must comply with any directions given by the Secretary of State, with the Treasury's consent⁷, as to (1) the information which is to be contained in the statement⁸; (2) the form which the statement is to take⁹; (3) the manner in which the information is to be presented¹⁰; or (4) the methods and principles according to which the statement is to be prepared¹¹.

Each of the bodies must send their statement to the Secretary of State at such time as he may direct¹², and the Secretary of State must, on or before 31 August in any year, send to the Comptroller and Auditor General the statements so prepared for the financial year last ended¹³. The Comptroller and Auditor General must examine, certify and report on each statement so sent to him, and must lay copies of it and of his report before each House of Parliament¹⁴.

1 The functions of the Secretary of State under the Museums and Galleries Act 1992 s 9, so far as they relate to the Court of Governors of the National Library of Wales and the Council of the National Museum of Wales, are transferred to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 Sch 11 para 30. In relation to those bodies the Treasury consent requirement under the Museums and Galleries Act 1992 s 9(5) (see the text to notes 7-11) continues in effect: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 Sch 11 para 30. The functions of the Comptroller and Auditor General in the Museums and Galleries Act 1992 s 9(7), (8) (see the text to notes 13-14) are, in relation to statements of account prepared by those bodies for financial years beginning in and after 1999, transferred to the Auditor General for Wales and in relation thereto s 9(8) has effect so that for the requirement to lay before Parliament the documents referred to therein, there is substituted a requirement for the Auditor General for Wales to lay those documents before the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the National Library of Wales see PARA 906. As to the National Museum of Wales see PARA 892. As to the National Assembly for Wales and the Auditor General for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 The specified bodies are: the trustees of the British Museum; the trustees of the Imperial War Museum; the Board of Trustees of the National Gallery; the trustees of the National Maritime Museum; the Board of Trustees of the National Portrait Gallery; the trustees of the Natural History Museum; the Board of Trustees of the Science Museum; the Board of Trustees of the Tate Gallery; the Board of Trustees of the Victoria and Albert Museum; the Board of Trustees of the Wallace Collection; the Museums and Galleries Commission: see the Museums and Galleries Act 1992 Sch 7 Pt I (amended by SI 1992/1311). The specified bodies also include the Court of Governors of the National Library of Wales and the Council of the National Museum of Wales: see the Museums and Galleries Act 1992 Sch 7 Pt II; and note 1. As to the British Museum and the Natural History Museum see PARA 825 et seq. As to the trustees of the Imperial War Museum see PARA 844. As to the Boards of Trustees of the National Gallery, the National Portrait Gallery, the Tate Gallery and the Wallace Collection see PARA 836. As to the trustees of the National Maritime Museum see PARA 850. As to the Board of Trustees of the Science Museum see PARA 870. As to the Board of Trustees of the Victoria and Albert Museum see PARA 864. As to the Museums and Galleries Commission see now the Museums, Libraries and Archives Council and PARA 818.

3 Museums and Galleries Act 1992 s 9(1) (s 9 amended by SI 1992/1311). Payments may be made on such conditions as the Secretary of State may impose with the approval of the Treasury: s 9(2) (as so amended). As to the meaning of 'Treasury' see PARA 809 note 4.

4 Museums and Galleries Act 1992 s 9(3).

5 'Financial year' means, in relation to any body, the period beginning with the day appointed under the Museums and Galleries Act 1992 s 11(4) for the commencement of s 9 in relation to that body and ending with 31 March following that day, and each successive period of 12 months: s 9(9). The appointed day was 1 April 1993: see the Museums and Galleries Act 1992 (Commencement) Order 1992, SI 1992/1874. As to the meaning of 'month' see PARA 803 note 11.

6 Museums and Galleries Act 1992 s 9(4).

7 Museums and Galleries Act 1992 s 9(5) (as amended: see note 3).

8 Museums and Galleries Act 1992 s 9(5)(a).

9 Museums and Galleries Act 1992 s 9(5)(b).

10 Museums and Galleries Act 1992 s 9(5)(c).

11 Museums and Galleries Act 1992 s 9(5)(d).

12 Museums and Galleries Act 1992 s 9(6) (as amended: see note 3).

13 Museums and Galleries Act 1992 s 9(7) (as amended: see note 3). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

14 Museums and Galleries Act 1992 s 9(8). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(8) MUSEUMS AND GALLERIES/(v) Finance, Accounts and Staff Pensions/896. Staff pensions.

896. Staff pensions.

The Minister for the Civil Service¹ may: (1) make, maintain and administer schemes, whether contributory or not, by which provision is made with respect to the pensions, allowances or gratuities which, subject to the fulfilment of such requirements and conditions as may be prescribed by the scheme, are to be paid, or may be paid, by him to or in respect of such of the persons to whom these provisions apply as he may determine²; (2) in relation to such persons as any such scheme may provide, pay or receive transfer values³; (3) in such circumstances as any such scheme may provide, make payments by way of a return of contributions, with or without interest⁴; and (4) make such payments as he thinks fit towards the provision, otherwise than by virtue of such a scheme, of superannuation benefits for or in respect of such of the persons to whom these provisions apply as he may determine⁵.

To such extent and subject to such conditions as he thinks fit, the minister may delegate to any other minister or officer of the Crown any functions exercisable by him under these provisions or any scheme made under them⁶. Before making a scheme, the minister, or if he so directs in relation to a particular scheme, another minister of the Crown specified in the direction, must consult with persons appearing to the minister concerned to represent persons likely to be affected by the scheme or with those persons themselves⁷. These provisions apply to persons, inter alia, serving in employment with specified museums and galleries⁸, royal and other commissions⁹ and other bodies¹⁰ falling within the scope of this title¹¹.

Persons employed by local library authorities¹² may be superannuable under the Local Government Pension Scheme¹³.

1 By the Transfer of Functions (Treasury and Minister for the Civil Service) Order 1995, SI 1995/269, art 3, Schedule para 6, the minister's functions under these provisions, which were transferred to the Treasury by the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, again became functions of the minister with effect from 1 April 1995. As to the Minister for the Civil Service see
CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427 et seq.

2 Superannuation Act 1972 s 1(1)(a). As to the meaning of 'person' see PARA 803 note 16.

3 Superannuation Act 1972 s 1(1)(b).

4 Superannuation Act 1972 s 1(1)(c).

5 Superannuation Act 1972 s 1(1)(d).

6 Superannuation Act 1972 s 1(2). Where a money purchase scheme under s 1 includes provision enabling a member to elect for the benefits which are to be provided to or in respect of him to be purchased from any authorised provider whom he may specify, then (1) notwithstanding s 1(1)(a) (see the text to note 2), the scheme may provide that the making of such an election has the effect, in such cases as the scheme may specify, of discharging any liability of the Treasury to pay those benefits to or in respect of that member; but (2) the scheme may not be so framed as to have the effect that benefits under it may only be provided in a manner which discharges that liability of the Treasury: s 1(2A) (added by the Pensions (Miscellaneous Provisions) Act 1990 s 8(1)). 'Authorised provider', in relation to the investment of any sums paid by way of voluntary contributions or the provision of any benefit, means (a) a person who has permission under the Financial Services and Markets Act 2000 Pt 4 (ss 40-55) to invest such sums or, as the case may be, to provide that benefit; (b) an EEA firm of a kind mentioned in Sch 3 para 5(a), (b) or (c) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 315), which has permission under Sch 3 para 15 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 315) (as a result of qualifying for authorisation under Sch 3 para 12: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 315) to invest such sums or, as the case may be, to provide that benefit and which satisfies the conditions applicable to it which are specified in the Superannuation

Act 1972 s 1(9B), (9C) or (9D); or (c) an EEA firm of a kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(d) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 315), which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12) to invest such sums or, as the case may be, to provide that benefit: Superannuation Act 1972 s 1(9) (definition substituted by SI 2001/3649). This definition must be read with the Financial Services and Markets Act 2000 s 22, any relevant order under s 22, and Sch 2 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84): Superannuation Act 1972 s 1(9A) (s 9(1A)-(9E) added by SI 2001/3649). If the EEA firm concerned is of the kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(a), the conditions are that in investing of the sums in question, or in providing the benefit in question, the firm is carrying on a service falling within section A or B of Annex I to the Markets in Financial Instruments Directive (ie European Parliament and Council Directive 2004/39 (OJ L145, 30.4.2004, p 1)), and that the firm is authorised by its home state authorisation to carry on that service: Superannuation Act 1972 s 1(9B) (as so added; and amended by SI 2007/126). If the EEA firm concerned is of the kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(b), the conditions are that, in investing of the sums in question, or in providing the benefit in question, the firm is carrying on an activity falling within the Banking Consolidation Directive (ie European Parliament and EC Council Directive 2006/48 (OJ L177 30.6.2006 p 1)); and that the activity in question is one in relation to which an authority in the firm's home state has regulatory functions: Superannuation Act 1972 s 1(9C) (as so added). If the EEA firm concerned is of the kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(c), the conditions are that, in investing of the sums in question, or in providing the benefit in question, the firm is carrying on an activity falling within the Banking Consolidation Directive Annex 1, that the activity in question is one in relation to which an authority in the firm's home state has regulatory functions, and that the firm also carries on the activity in question in its home state: Superannuation Act 1972 s 1(9D) (as so added). Expressions used in s 1(9B)-(9D) which are also used in the Financial Services and Markets Act 2000 Sch 3 have the same meaning as in Sch 3: Superannuation Act 1972 s 1(9E) (as so added).

7 Superannuation Act 1972 s 1(3).

8 **I**e persons in employment with the Armouries, the British Museum, the Natural History Museum, the Imperial War Museum, the London Museum, the National Gallery, the National Maritime Museum, the National Museums and Galleries on Merseyside, the National Portrait Gallery, the Royal Botanic Gardens, Kew, the Science Museum, Sir John Soane's Museum, the Tate Gallery, the Victoria and Albert Museum and the Wallace Collection: Superannuation Act 1972 s 1(4)(b), Sch 1 (amended by the National Heritage Act 1983 ss 1, 9, 17, 23, Sch 1 paras 4(7), 14(7), 24(7), 34(7); the Museums and Galleries Act 1992 Sch 8 para 1(1), (2), (5); SI 1990/757; SI 2003/1073). As to the appointment of staff at the Armouries see PARA 877; at the British Museum and the Natural History Museum see PARA 828; at the Imperial War Museum see PARA 845; at the London Museum see PARA 858; at the National Gallery, the National Portrait Gallery, the Tate Gallery and the Wallace Collection see PARA 837; at the National Maritime Museum see PARA 851; at the Royal Botanic Gardens, Kew see PARA 884; at the Science Museum see PARA 871; at the Victoria and Albert Museum see PARA 865.

9 **I**e persons in employment with the Commission for Architecture and the Built Environment, the Historic Buildings and Monuments Commission for England, the Historical Manuscripts Commission, and the Royal Commission on Ancient and Historical Monuments of Wales: see the Superannuation Act 1972 Sch 1 (amended by SI 1986/2119; SI 2000/108; SI 2003/1073). As to the Commission for Architecture and the Built Environment see PARA 812. As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the Historical Manuscripts Commission see PARA 813. As to the Royal Commission on Ancient and Historical Monuments of Wales see PARA 811.

10 **I**e persons in employment with the Arts and Humanities Research Council, the British Council, the British Library, the Trustees of the National Heritage Memorial Fund, and the Council for Museums, Archives and Libraries: see the Superannuation Act 1972 Sch 1 (amended by the British Council and Commonwealth Institute Superannuation Act 1986 s 1(1); SI 2000/108; SI 2000/1728; SI 2003/1073; the Higher Education Act 2004 s 5(2)). As to the Arts and Humanities Research Council see PARA 976. As to the British Council see PARA 966. As to the British Library see PARA 906. As to the National Heritage Memorial Fund see PARA 815. As to the Council for Museums, Archives and Libraries PARA 818.

11 As to the scope of this title see PARA 801.

12 As to the meaning of 'library authority' see PARA 926.

13 See the Local Government Pension Scheme Regulations 1997, SI 1997/1612; the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 448 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(i) Public Lending Right/897. The Public Lending Right Act 1979 and the public lending right scheme.

(9) LIBRARIES

(i) Public Lending Right

897. The Public Lending Right Act 1979 and the public lending right scheme.

The Public Lending Right Act 1979 provides that, in accordance with a scheme to be known as the public lending right scheme, there is conferred on authors a right, known as public lending right, to receive from time to time out of a central fund payment in respect of loans of their books to the public by local library authorities in the United Kingdom¹. The scheme is administered by the Registrar of Public Lending Right². The provisions of the Act and the public lending right scheme are covered in detail elsewhere in this work³.

1 See the Public Lending Right Act 1979 s 1(1). As to the meaning of 'United Kingdom' see PARA 804 note 2. The scheme is the Public Lending Right Scheme 1982 as set out in the Public Lending Right Scheme 1982 (Commencement) Order 1982, SI 1982/719, Appendix.

2 See the Public Lending Right Act 1979 s 1(3), Schedule.

3 See **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS**.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(ii) Delivery of Books to Libraries/898. Deposit of publications.

(ii) Delivery of Books to Libraries

898. Deposit of publications.

A person¹ who publishes² in the United Kingdom³ a specified work must at his own expense deliver a copy of it to an address⁴ specified (generally or in a particular case) by any deposit library⁵ entitled to delivery under these provisions⁶.

The specified works are:

- 187 (1) subject to any prescribed exception, in the case of a work published in print⁷:
 - (a) a book (including a pamphlet, magazine or newspaper)⁸; (b) a sheet of letterpress or music⁹; (c) a map, plan, chart or table¹⁰; and (d) a part of any such work¹¹;
- 188 (2) in the case of a work published in a medium¹² other than print, a work of a prescribed description¹³.

The obligation is to deliver a copy of the work in the medium in which it is published¹⁴.

These provisions do not apply to works published before 1 February 2004¹⁵, nor to a work which is substantially the same as one already published in the same medium in the United Kingdom¹⁶.

Where a person (the 'publisher') is required¹⁷ to deliver anything to an address specified by a deposit library, or to a deposit library, has failed to comply with that obligation¹⁸, the library may, in accordance with rules of court, apply to the county court for an order requiring the publisher to comply with the obligation¹⁹. If on such an application it appears that the publisher is unable to comply with the obligation²⁰, or for any other reason it is not appropriate to make an order²¹, the court may instead make an order requiring the publisher to pay to the library an amount which is not more than the cost of making good the failure to comply²².

1 As to the meaning of 'person' see PARA 803 note 16.

2 'Publication', in relation to a work: (1) means the issue of copies of the work to the public; and (2) includes making the work available to the public by means of an electronic retrieval system; and related expressions are to be interpreted accordingly: Legal Deposit Libraries Act 2003 s 14.

3 As to the meaning of 'United Kingdom' see PARA 804 note 2.

4 'Address' means an address in the United Kingdom or an electronic address: Legal Deposit Libraries Act 2003 s 1(7).

5 'Deposit library' means any of: (1) the British Library Board; and (2) the authorities controlling the National Library of Scotland; the National Library of Wales; the Bodleian Library, Oxford; the University Library, Cambridge; and the Library of Trinity College, Dublin: Legal Deposit Libraries Act 2003 s 14. As to the British Library and the National Library of Wales see PARA 906.

6 Legal Deposit Libraries Act 2003 s 1(1). If a deposit library other than the authority controlling the Library of Trinity College, Dublin has not specified an address, the copy is to be delivered to the library: s 1(2).

7 See the Legal Deposit Libraries Act 2003 s 1(3). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 14. As to the making of regulations see PARA 903. As to the Secretary of State see PARA 802

note 2. At the date at which this volume states the law no such regulations had been made. As to the deposit of printed publications see further PARAS 900, 901.

8 Legal Deposit Libraries Act 2003 s 1(3)(a).

9 Legal Deposit Libraries Act 2003 s 1(3)(b).

10 Legal Deposit Libraries Act 2003 s 1(3)(c).

11 Legal Deposit Libraries Act 2003 s 1(3)(d).

12 'Medium' means any medium of publication, including in particular any form of on line or off line publication: Legal Deposit Libraries Act 2003 s 14.

13 Legal Deposit Libraries Act 2003 s 1(4). A prescribed description may not include works consisting only of (1) a sound recording or film or both (s 1(5)(a)); or (2) such material and other material which is merely incidental to it (s 1(5)(b)). At the date at which this volume states the law no regulations had been made prescribing such works. 'Sound recording' means:

3 (1) a recording of sounds, from which the sounds may be reproduced, or

4 (2) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced: see the Copyright, Designs and Patents Act 1988 s 5A(1) (s 5A added by SI 1995/3297); definition applied by the Legal Deposit Libraries Act 2003 s 14. 'Film' means a recording on any medium from which a moving image may by any means be produced; and the sound track accompanying a film is treated as part of the film for these purposes: see the Copyright, Designs and Patents Act 1988 s 5B(1), (2) (s 5B added by SI 1995/3297); definition applied by the Legal Deposit Libraries Act 2003 s 14. As to the deposit of non print publications see further PARA 899.

14 Legal Deposit Libraries Act 2003 s 1(6). This provision is expressed to be subject to s 6(2)(h) (see PARA 899): see s 1(6). As to exemptions from liability arising from the deposit of publications see PARA 902.

15 Legal Deposit Libraries Act 2003 s 16(4). 1 February 2004 is the date of the commencement of s 1: see s 16(1), (4); Legal Deposit Libraries Act 2003 (Commencement) Order 2004, SI 2004/130, art 2.

16 See the Legal Deposit Libraries Act 2003 s 2(1). Where substantially the same work is published in the United Kingdom in more than one medium: (1) s 1(1) (see the text to notes 1-6) applies only in relation to its publication in one of those media (s 2(2)(a)); and (2) that medium is to be determined in accordance with regulations made by the Secretary of State (s 2(2)(b)). The Secretary of State may by regulations make provision as to circumstances in which works are or are not to be regarded for these purposes as substantially the same: s 2(3). At the date at which this volume states the law no such regulations had been made.

17 le by or under the Legal Deposit Libraries Act 2003.

18 Legal Deposit Libraries Act 2003 s 3(1).

19 Legal Deposit Libraries Act 2003 s 3(2). As to county courts see COURTS vol 10 (Reissue) PARA 701 et seq.

20 Legal Deposit Libraries Act 2003 s 3(3)(a).

21 Legal Deposit Libraries Act 2003 s 3(3)(b).

22 Legal Deposit Libraries Act 2003 s 3(3).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(ii) Delivery of Books to Libraries/899. Non print publications.

899. Non print publications.

The Secretary of State¹ may make regulations² supplementing the provisions relating to the deposit of publications³ as they apply to works published in media⁴ other than print⁵. Such regulations may in particular:

- 189 (1) make provision about the time at which or the circumstances in which any deposit library⁶ becomes or ceases to be entitled⁷ to delivery⁸;
- 190 (2) require the person who publishes the work⁹ to deliver, with the copy of the work, a copy of any computer program and any information necessary in order to access the work, and a copy of any manual and other material that accompanies the work and is made available to the public¹⁰;
- 191 (3) require delivery within a time prescribed in the regulations by reference to publication or another event¹¹;
- 192 (4) permit or require delivery by electronic means¹²;
- 193 (5) where a work is produced for publication in copies of differing quality, specify the quality of copies to be delivered¹³;
- 194 (6) where a work is published or made available to the public in different formats, provide for the format in which any copy is to be delivered to be determined in accordance with requirements specified (generally or in a particular case) by the deposit libraries or any of them¹⁴;
- 195 (7) make provision as to the circumstances in which works published on line are or are not to be treated as published in the United Kingdom¹⁵;
- 196 (8) specify the medium in which a copy of a work published on line is to be delivered¹⁶.

A relevant person¹⁷ may not do any of the following activities in relation to relevant material¹⁸. The activities are: (a) using the material (whether or not such use necessarily involves the making of a temporary copy of it)¹⁹; (b) copying the material (other than by making a temporary copy where this is necessary for the purpose of using the material)²⁰; (c) in the case of relevant material comprising or containing a computer program or database, adapting it²¹; (d) lending the material to a third party (other than lending by a deposit library to a reader for use by the reader on library premises controlled by the library)²²; (e) transferring the material to a third party²³; (f) disposing of the material²⁴. However, the Secretary of State may by regulations make provision permitting relevant persons to do any of these activities in relation to relevant material, subject to such conditions as may be prescribed²⁵. A contravention of these provisions²⁶ is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty²⁷.

1 As to the Secretary of State see PARA 802 note 2.

2 As to the making of regulations see PARA 903. At the date at which this volume states the law no such regulations had been made.

3 Ie the Legal Deposit Libraries Act 2003 ss 1 and 2: see PARA 898. As to the meaning of 'publication' see PARA 898 note 2.

- 4 As to the meaning of 'medium' see PARA 898 note 12.
- 5 Legal Deposit Libraries Act 2003 s 6(1).
- 6 As to the meaning of 'deposit library' see PARA 898 note 5.
- 7 Ie under the Legal Deposit Libraries Act 2003 s 1: see PARA 898.
- 8 Legal Deposit Libraries Act 2003 s 6(2)(a).
- 9 Ie the person mentioned in the Legal Deposit Libraries Act 2003 s 1(1): see PARA 898. As to the meaning of 'person' see PARA 803 note 16.
- 10 Legal Deposit Libraries Act 2003 s 6(2)(b). As to exemptions from liability arising from the delivery, pursuant to regulations under s 6, of a copy of a computer program or material within s 6(2)(b) see PARA 902.
- 11 Legal Deposit Libraries Act 2003 ss 6(2)(c), 14.
- 12 Legal Deposit Libraries Act 2003 s 6(2)(d).
- 13 Legal Deposit Libraries Act 2003 s 6(2)(e).
- 14 Legal Deposit Libraries Act 2003 s 6(2)(f).
- 15 Legal Deposit Libraries Act 2003 s 6(2)(g). As to the meaning of 'United Kingdom' see PARA 804 note 2.
- 16 Legal Deposit Libraries Act 2003 s 6(2)(h).
- 17 'Relevant person' means a deposit library or person acting on its behalf, or a reader: Legal Deposit Libraries Act 2003 s 7(5)(c). 'Reader' means a person who, for the purposes of research or study and with the permission of a deposit library, is on library premises controlled by it: s 7(5)(a). References in s 7 to a deposit library include references to the Faculty of Advocates: s 7(5)(d).
- 18 Legal Deposit Libraries Act 2003 s 7(1). 'Relevant material' means: (1) a copy delivered under s 1 (see PARA 898) of a work published in a medium other than print (s 7(5)(b)(i)); (2) a copy delivered pursuant to regulations under s 6 (see the text to notes 1-16) of a computer program or material within s 6(2)(b) (s 7(5)(b)(ii)); (3) a copy of a work to which s 10(6) (see PARA 902) applies (s 7(5)(b)(iii)); (4) a copy (at any remove) of anything within any of heads (1)-(3) above (s 7(5)(b)(iv)).
- 19 Legal Deposit Libraries Act 2003 s 7(2)(a). As to exemptions from liability arising out of the doing by a relevant person of an activity listed in s 7(2) see PARA 902.
- 20 Legal Deposit Libraries Act 2003 s 7(2)(b).
- 21 Legal Deposit Libraries Act 2003 s 7(2)(c).
- 22 Legal Deposit Libraries Act 2003 s 7(2)(d).
- 23 Legal Deposit Libraries Act 2003 s 7(2)(e).
- 24 Legal Deposit Libraries Act 2003 s 7(2)(f).
- 25 Legal Deposit Libraries Act 2003 s 7(3). Such regulations may in particular make provision about: (1) the purposes for which relevant material may be used or copied (s 7(4)(a)); (2) the time at which or the circumstances in which readers may first use relevant material (s 7(4)(b)); (3) the description of readers who may use relevant material (s 7(4)(c)); (4) the limitations on the number of readers who may use relevant material at any one time (whether by limiting the number of terminals in a deposit library from which readers may at any one time access an electronic publication or otherwise) (s 7(4)(d)). At the date at which this volume states the law no such regulations had been made. 'Electronic publication' means an on line or off line publication including any publication in electronic form (within the meaning given by the Copyright, Designs and Patents Act 1988 s 178: see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 184); Legal Deposit Libraries Act 2003 s 14. Neither copyright, nor database right in a database, is infringed by the doing of anything in relation to relevant material permitted to be done under regulations under s 7: see the Copyright, Designs and Patents Act 1988 s 44A(2); Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20A(2); and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARAS 364, 764.
- 26 Ie the Legal Deposit Libraries Act 2003 s 7: see the text to notes 17-25.

27 Legal Deposit Libraries Act 2003 s 7(6). As to breach of statutory duty see **TORT** vol 97 (2010) PARA 495 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(ii) Delivery of Books to Libraries/900. Printed publications: the British Library.

900. Printed publications: the British Library.

The British Library Board¹ is entitled to delivery² of a copy of every work published³ in print⁴. The copy must be delivered within one month⁵ beginning with the day of publication⁶, and is to be of the same quality as the best copies which, at the time of delivery, have been produced for publication in the United Kingdom⁷. The Board must give a receipt in writing⁸ (whether sent by electronic or other means)⁹.

1 As to the British Library Board see PARA 908.

2 Ie under the Legal Deposit Libraries Act 2003 s 1: see PARA 898.

3 As to the meaning of 'publish' see PARA 898 note 2.

4 Legal Deposit Libraries Act 2003 s 4(1).

5 As to the meaning of 'month' see PARA 803 note 11.

6 Legal Deposit Libraries Act 2003 s 4(2).

7 Legal Deposit Libraries Act 2003 s 4(3). As to the meaning of 'United Kingdom' see PARA 804 note 2.

8 As to the meaning of 'writing' see PARA 805 note 14.

9 Legal Deposit Libraries Act 2003 s 4(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(ii) Delivery of Books to Libraries/901. Printed publications: other libraries.

901. Printed publications: other libraries.

Each deposit library¹, other than the British Library Board², is entitled to delivery³ of a copy of any work published⁴ in print which it requests⁵. A request must be in writing⁶ (whether sent by electronic or other means)⁷, may be made before publication⁸, and, in particular, may relate to all future numbers or parts of an encyclopaedia, newspaper, magazine or other work⁹. However, no request may be made after the end of 12 months¹⁰ beginning with the day of publication¹¹.

The copy must be delivered within one month beginning with the day of publication¹² or, if later, the day on which the request is received¹³. The copy is to be of the same quality as the largest number of copies which, at the time of delivery, have been produced for publication in the United Kingdom¹⁴.

1 As to the meaning of 'deposit library' see PARA 898 note 5.

2 As to the British Library Board see PARA 908. As to the delivery of printed publications to the British Library Board see PARA 900.

3 Ie under the Legal Deposit Libraries Act 2003 s 1: see PARA 898.

4 As to the meaning of 'publish' see PARA 898 note 2.

5 Legal Deposit Libraries Act 2003 s 5(1).

6 As to the meaning of 'writing' see PARA 805 note 14.

7 Legal Deposit Libraries Act 2003 s 5(2).

8 Legal Deposit Libraries Act 2003 s 5(3)(a).

9 Legal Deposit Libraries Act 2003 s 5(3)(b).

10 As to the meaning of 'month' see PARA 803 note 11.

11 Legal Deposit Libraries Act 2003 s 5(4).

12 Legal Deposit Libraries Act 2003 s 5(5)(a).

13 Legal Deposit Libraries Act 2003 s 5(5)(b).

14 Legal Deposit Libraries Act 2003 s 5(6). As to the meaning of 'United Kingdom' see PARA 804 note 2.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(ii) Delivery of Books to Libraries/902. Exemptions from liability.

902. Exemptions from liability.

The delivery by a person¹ of a copy of a work is to be taken: (1) not to breach any contract relating to any part of the work to which that person is a party²; and (2) not to infringe copyright, publication right or database right in relation to any part of the work or any patent³.

A deposit library⁴, or a person acting on its behalf, is not liable in damages, or subject to any criminal liability, for defamation arising out of the doing by a relevant person⁵ of a prescribed activity⁶ in relation to a copy of a work delivered⁷ to the library⁸. However, this does not apply to the liability of a deposit library where (a) it knows, or in the case of liability in damages it knows of facts or circumstances from which it ought to know, that the copy contains a defamatory statement⁹; and (b) it has had a reasonable opportunity since obtaining that knowledge to prevent the doing of the activity in relation to the copy¹⁰.

Where¹¹ a person (the 'publisher') has delivered a copy of a work to an address specified by a deposit library, the publisher is not liable in damages, or subject to any criminal liability, for defamation arising out of the doing by a relevant person of a prescribed activity¹² in relation to the copy¹³. However, this does not apply where (i) the publisher knows, or in the case of liability in damages the publisher knows of facts or circumstances from which it ought to know, that the copy contains a defamatory statement¹⁴; and (ii) it has had a reasonable opportunity since obtaining that knowledge to inform the library of the matter, facts or circumstances known to it and has not done so¹⁵.

Where a work is published on the internet and certain conditions are met¹⁶: (A) no person other than the library is liable in damages, or subject to any criminal liability, for defamation arising out of the doing by a relevant person of a prescribed activity¹⁷ in relation to a copy of the work¹⁸; and (B) the above provisions¹⁹ apply in relation to the doing of an activity in relation to the copy as they apply in relation to the doing of the activity in relation to a copy of a work delivered²⁰.

The Secretary of State²¹ may by regulations provide for these provisions²², as they apply in relation to liability in damages and criminal liability for defamation, to apply in relation to liability (including criminal liability) of any description prescribed in the regulations, subject to such modifications as may be prescribed²³.

Nothing in these provisions²⁴ imposes liability on any person²⁵.

1 Le pursuant to the Legal Deposit Libraries Act 2003 s 1: see PARA 898. Section 9(1) applies to the delivery, pursuant to regulations under s 6, of a copy of a computer program or material within s 6(2)(b) (see PARA 899) as it applies to the delivery of a copy of a work pursuant to s 1: s 9(2). As to the meaning of 'person' see PARA 803 note 16.

2 Legal Deposit Libraries Act 2003 s 9(1)(a).

3 Legal Deposit Libraries Act 2003 s 9(1)(b). 'Database right' has the meaning given by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 13(1) (see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 736); Legal Deposit Libraries Act 2003 s 14. As to copyright see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 54 et seq. As to publication right see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 497 et seq. As to patents see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 301 et seq.

4 As to the meaning of 'deposit library' see PARA 898 note 5. References in the Legal Deposit Libraries Act 2003 s 10 to a deposit library include references to the Faculty of Advocates: s 10(7)(c).

5 As to the meaning of 'relevant person' see PARA 899 note 17: definition applied by the Legal Deposit Libraries Act 2003 s 10(7)(a).

6 Ie an activity listed in the Legal Deposit Libraries Act 2003 s 7(2): see PARA 899. References in s 10 to activities listed in s 7(2) are references to those activities whether or not done in relation to relevant material (as defined in s 7: see PARA 899 note 18): s 10(7)(b).

7 Ie under the Legal Deposit Libraries Act 2003 s 1: see PARA 898.

8 Legal Deposit Libraries Act 2003 s 10(1). Where s 10 applies to the doing of an activity in relation to a copy of a work it also applies to the doing of the activity in relation to a copy (at any remove) of that copy: s 10(9). As to liability for defamatory statements see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 10.

9 Legal Deposit Libraries Act 2003 s 10(2)(a).

10 Legal Deposit Libraries Act 2003 s 10(2)(b).

11 Ie pursuant to the Legal Deposit Libraries Act 2003 s 1: see PARA 898.

12 See note 6.

13 Legal Deposit Libraries Act 2003 s 10(3).

14 Legal Deposit Libraries Act 2003 s 10(4)(a).

15 Legal Deposit Libraries Act 2003 s 10(4)(b).

16 See the Legal Deposit Libraries Act 2003 s 10(5). The conditions are: (1) the work is of a description prescribed by regulations (Legal Deposit Libraries Act 2003 s 10(5)(a)); (2) the publication of the work on the internet, or a person publishing it there, is connected with the United Kingdom in a manner so prescribed (s 10(5)(b)); and (3) the copy was made by a deposit library or person acting on its behalf copying the work from the internet in accordance with any conditions so prescribed (s 10(5)(c)). Neither copyright, nor database right in a database, is infringed by the copying of a work from the internet by a deposit library or person acting on its behalf if the work is of a description prescribed by such regulations, its publication on the internet, or a person publishing it there, is connected with the United Kingdom in a manner so prescribed, and the copying is done in accordance with any conditions so prescribed: see the Copyright, Designs and Patents Act 1988 s 44A(1); Copyright and Rights in Databases Regulations 1997, SI 1997/3032, reg 20A(1); and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARAS 364, 764. As to the making of regulations see PARA 903. As to the meaning of 'United Kingdom' see PARA 804 note 2. At the date at which this volume states the law no such regulations had been made.

17 See note 6.

18 See the Legal Deposit Libraries Act 2003 s 10(6)(a). See also note 8.

19 Ie the Legal Deposit Libraries Act 2003 s 10(1), (2): see the text to notes 4-10.

20 See the Legal Deposit Libraries Act 2003 s 10(6)(b). See also note 8.

21 As to the Secretary of State see PARA 802 note 2.

22 Ie for the Legal Deposit Libraries Act 2003 s 10: see the text to notes 4-20.

23 Legal Deposit Libraries Act 2003 s 10(8). At the date at which this volume states the law no such regulations had been made.

24 Ie nothing in the Legal Deposit Libraries Act 2003 s 10: see the text to notes 4-23.

25 Legal Deposit Libraries Act 2003 s 10(10).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(ii) Delivery of Books to Libraries/903. Regulations.

903. Regulations.

Any power under the Legal Deposit Libraries Act 2003 to make regulations: (1) includes power to make different provision for different purposes, including in particular different media¹, descriptions of work, deposit libraries² or areas³; and (2) as well as being exercisable in relation to all cases to which it extends, may be exercised in relation to those cases subject to specified exceptions, or in relation to a particular case or class of cases⁴. Any such power to make regulations is exercisable by statutory instrument, and no such regulations may be made unless a draft of the instrument containing them has been laid before and approved by a resolution of each House of Parliament⁵.

Regulations under the Act may not be made unless the Secretary of State has consulted the deposit libraries⁶, and the publishers appearing to the Secretary of State to be likely to be affected⁷. Regulations may not be made without the consent of the Welsh Ministers⁸ if they would: (a) remove an entitlement conferred by or under the Act on the authority controlling the National Library of Wales⁹; or (b) confer an entitlement that is not conferred on that authority on any other deposit library¹⁰; but this does not apply where the entitlement is to delivery of copies of electronic publications¹¹ and that authority is provided with a means of accessing those publications electronically¹². Where this provision¹³ does not apply, regulations that would affect the authority controlling the National Library of Wales may not be made unless the Secretary of State has consulted the Welsh Ministers¹⁴.

Regulations under the Act which confer an entitlement on the authority controlling the Library of Trinity College, Dublin may not be made unless the Secretary of State is satisfied as to certain matters¹⁵.

1 As to the meaning of 'medium' see PARA 898 note 12.

2 As to the meaning of 'deposit library' see PARA 898 note 5.

3 Legal Deposit Libraries Act 2003 s 11(1)(a).

4 Legal Deposit Libraries Act 2003 s 11(1)(b). Regulations under s 1(4) (see PARA 898) or s 6 (see PARA 899) may not be made so as to apply to works published before the regulations are made: s 11(3). Regulations under s 1(4), s 2 (see PARA 898) or s 6 may not be made unless the Secretary of State considers that the costs likely to be incurred as a result of the regulations by persons who publish works to which the regulations relate are not disproportionate to the benefit to the public arising from the delivery of copies of such works: s 11(4). Regulations under ss 1(4), 2, 6, 7 (see PARA 899) or s 10(5) (see PARA 902) may not be made unless the Secretary of State considers that the regulations do not unreasonably prejudice the interests of persons who publish works to which the regulations relate: s 11(5). As to the meaning of 'publish' see PARA 898 note 2. As to the Secretary of State see PARA 802 note 2. As to the meaning of 'person' see PARA 803 note 16.

5 Legal Deposit Libraries Act 2003 s 11(6). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941. As to statutory instruments generally see STATUTES vol 44(1) (Reissue) PARA 1501 et seq.

6 Legal Deposit Libraries Act 2003 s 11(2)(a). As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

7 Legal Deposit Libraries Act 2003 s 11(2)(b).

8 The functions under the Legal Deposit Libraries Act 2003 s 12 originally vested in the National Assembly for Wales are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the circumstances in which the Secretary of

State must either obtain the consent of, or consult with, the Scottish Ministers see the Legal Deposit Libraries Act 2003 s 12(1)-(3). As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

9 Legal Deposit Libraries Act 2003 s 12(4)(a). As to the National Library of Wales see PARA 906.

10 Legal Deposit Libraries Act 2003 s 12(4)(b).

11 As to the meaning of 'electronic publication' see PARA 899 note 25.

12 Legal Deposit Libraries Act 2003 s 12(4).

13 Ie the Legal Deposit Libraries Act 2003 s 12(4): see the text to notes 8-12.

14 Legal Deposit Libraries Act 2003 s 12(5).

15 The Secretary of State must be satisfied, in relation to relevant material delivered pursuant to such an entitlement: (1) that as regards the restriction by s 7 (see PARA 899) (having regard to any regulations made under that section) of activities in relation to relevant material, the restriction of those activities under the laws of Ireland is not substantially less (s 13(1)(a)); (2) that as regards the protection under the laws of any part of the United Kingdom of copyright, publication right, database right and patents in relation to relevant material, the protection under the laws of Ireland of corresponding rights is not substantially less (s 13(1)(b)); and (3) that as regards the protection from liability under s 10(3) and (4) (see PARA 902) (or those subsections as applied by regulations under that section), the protection under the laws of Ireland in relation to corresponding liability is not substantially less (s 13(1)(c)). As to the meaning of 'relevant material' see PARA 899 note 18: definition applied by s 13(2).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(iii) Offences relating to Libraries/904. Offences relating to private libraries.

(iii) Offences relating to Libraries

904. Offences relating to private libraries.

Any person who, in one of certain libraries and reading rooms¹, to the annoyance or disturbance of any person using it (1) behaves in a disorderly manner²; (2) uses violent, abusive or obscene language³; or (3) after proper warning persists in remaining there beyond the hours fixed for closing⁴, commits an offence⁵.

1 These provisions apply to any library or reading room maintained by a society registered under the Industrial and Provident Societies Acts 1965 to 1975 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2394 et seq) or the Friendly Societies Act 1974 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2081 et seq): Libraries Offences Act 1898 s 3(b); Interpretation Act 1978 s 17(2)(a). They also apply to any library or reading room maintained by any trade union: Libraries Offences Act 1898 s 3(b); Trade Union and Labour Relations (Consolidation) Act 1992 s 300(3), Sch 3 para 4. As to the meaning of 'trade union' see **EMPLOYMENT** vol 40 (2009) PARA 852.

2 Libraries Offences Act 1898 s 2(1).

3 Libraries Offences Act 1898 s 2(2).

4 Libraries Offences Act 1898 s 2(4).

5 See the Libraries Offences Act 1898 s 2 (amended by the Gambling Act 2005 s 356(1), (4), Sch 16 Pt 1 para 2, Sch 17). The penalty for such an offence is, on summary conviction, a fine not exceeding level 1 on the standard scale: see the Libraries Offences Act 1898 s 2 (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(iii) Offences relating to Libraries/905. Disinfection and destruction of infected library books.

905. Disinfection and destruction of infected library books.

Until a day to be appointed the following provisions have effect¹.

A person who knows that he is suffering from a notifiable disease² must not take a book, or cause a book to be taken for his use, or use any book taken, from any public or circulating library³, nor must any person permit a book which has been taken from the library and is under his control to be used by any person whom he knows to be suffering from a notifiable disease⁴. A person must not return to such a library a book which he knows to have been exposed to infection from a notifiable disease, or permit any such book which is under his control to be so returned, but must give notice to the local authority⁵, or, in the case of a library provided by a county council, to that council, that the book has been so exposed to infection⁶. On receiving the notice, the local authority or county council must cause the book to be either disinfected and returned to the library or destroyed⁷.

A person who contravenes any of these provisions commits an offence⁸.

1 As from a day to be appointed, the Public Health (Control of Disease) Act 1984 ss 10, 13 25 are repealed by the Health and Social Care Act 2008 ss 130(1), 166, 170(3), Sch 15 Pt 3. At the date at which this volume states the law no such day had been appointed.

2 'Notifiable disease' means any of the following, ie cholera, plague, relapsing fever, smallpox and typhus: Public Health (Control of Disease) Act 1984 s 10. The Secretary of State has power under s 13 to make regulations applying s 25 (see the text to notes 3-8) in respect of any other disease specified in the regulations: see s 13(2). Tuberculosis of the respiratory tract in an infectious state is also a notifiable disease for these purposes, as are rabies and viral haemorrhagic fever: see the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 3, Sch 1.

3 Public Health (Control of Disease) Act 1984 s 25(1).

4 Public Health (Control of Disease) Act 1984 s 25(2).

5 For these purposes, 'local authority' means a district council in England, a county council or county borough council in Wales, a London borough council, the Common Council of the City of London and the Sub-treasurer of the Inner Temple and the Under Treasurer of the Middle Temple: see Public Health (Control of Disease) Act 1984 s 1(1), (2) (amended by the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 13(1)).

6 Public Health (Control of Disease) Act 1984 s 25(3).

7 Public Health (Control of Disease) Act 1984 s 25(4).

8 See the Public Health (Control of Disease) Act 1984 s 25(5). The penalty for such an offence is, on summary conviction, a fine not exceeding level 1 on the standard scale: see s 25(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(iv) The British Library/A. ESTABLISHMENT AND PURPOSE OF THE LIBRARY/906. The British Library.

(iv) The British Library

A. ESTABLISHMENT AND PURPOSE OF THE LIBRARY

906. The British Library.

The British Library Act 1972, which came into force on receiving the royal assent on 27 July 1972¹, established for the United Kingdom² a national library, known as the 'British Library' consisting of a comprehensive collection of books, manuscripts, periodicals, films and other recorded matter, whether printed or otherwise³. There is, however, also a National Library of Wales, which was established by royal charter in 1907⁴.

The British Library is under the control and management of a public authority, known as the British Library Board, whose duty is to manage the library as a national centre for reference, study and bibliographical and other information services, in relation both to scientific and technological matters and to the humanities⁵. The board must make the services of the British Library available in particular to institutions of education and learning, other libraries and industry⁶. It is within the board's functions, so far as it thinks it expedient for achieving the objects of the 1972 Act and generally for contributing to the efficient management of other libraries and information services, to carry out and sponsor research⁷. The board may contribute to the expenses of library authorities⁸, or of any other person⁹ providing library facilities, whether for members of the public or otherwise¹⁰. Subject to such restrictions and conditions as it thinks necessary to safeguard its collections, the board may lend any item, and make any part of its collections, or of its premises, available in connection with events of an educational, literary or cultural nature¹¹; but in deciding whether or not to lend any such item and in determining the time for which and the conditions subject to which any such item is to be lent, the board must have regard to the interests of students and other persons visiting the national library, to the physical condition and degree of rarity of the item in question and to any risks to which it is likely to be exposed¹².

1 Le with the exception of the British Library Act 1972 s 3 (relating to the transfer of the British Museum Library: see PARA 907), which came into force on 1 July 1973: see s 3(1), (2); and the British Library (Appointed Day) Order 1973, SI 1973/1125.

2 As to the meaning of 'United Kingdom' see PARA 804 note 2.

3 British Library Act 1972 s 1(1). The establishment of a national library system with the British Library at its head was recommended by the *Report of the National Libraries Committee* (Chairman: Dr FS Dainton FRS) (Cmnd 4028) (1969) and proposed in the White Paper *The British Library* (Cmnd 4572) (1971). As to the deposit of publications with the British Library see PARA 898 et seq.

4 The National Library of Wales was established by a royal charter of 19 March 1907. Supplemental charters were given to the library in 1911 and 1978. On the 19 July 2006 a new supplemental charter was granted dissolving the supplemental charter of 1978 and changing the constitution and the governance of the library. The library is now governed by a Board of Trustees. The library is an Assembly Government Sponsored Body and receives an annual grant in aid from the National Assembly for Wales which is the library's main source of income: see the National Library of Wales website at www.lgc.org.uk. As to the Welsh Assembly Government see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. The Board of Trustees of the National Library of Wales is a specified transferee (but not transferor) for the purposes of the general powers of transfer between collections (see the Museums and Galleries Act 1992 s 6, Sch 5; and PARA 820) and a specified body for the purposes of the statutory provision for vesting of gifts to the nation where the donor has not specified a destination (see s 7; and PARA 821).

- 5 British Library Act 1972 s 1(2). As to the British Library Board see PARA 908.
- 6 British Library Act 1972 s 1(3).
- 7 British Library Act 1972 s 1(3)(a).
- 8 Ie within the meaning of the Public Libraries and Museums Act 1964: see PARA 926.
- 9 As to the meaning of 'person' see PARA 803 note 16.
- 10 British Library Act 1972 s 1(3)(b).
- 11 British Library Act 1972 s 1(4).
- 12 British Library Act 1972 s 1(4) proviso. As to the government indemnity scheme for items on loan see PARA 1090.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(iv) The British Library/A. ESTABLISHMENT AND PURPOSE OF THE LIBRARY/907. Transfer of British Museum Library.

907. Transfer of British Museum Library.

All articles which immediately before 1 July 1973¹ were the property of the trustees of the British Museum² and (1) formed part of the collections in the museum's Department of Printed Books, Department of Manuscripts and Department of Oriental Printed Books and Manuscripts³; or (2) were in normal use in those departments for the purposes of the collections, or of their storage or management, or of the administration of the department⁴, ceased on that day to be property of the trustees and became property of the British Library Board⁵. This did not, however, apply to any article for which it had been agreed in writing⁶ between the trustees and the board that it was not to become the board's property⁷.

The trustees may transfer to the board any article from their collections as to which the board has indicated to the trustees that the article is required for the British Library⁸. This power is exercisable notwithstanding any trust or condition, whether express or implied, prohibiting or restricting the disposal of the article, and notwithstanding anything in the British Museum Act 1963⁹; but it does not apply to pictures¹⁰. There is, also, now a further general statutory power to transfer objects between certain specified bodies including the board and the trustees¹¹.

If any property was previously vested in the trustees subject to any trust or condition, on transfer to the board it remains subject to the same trust or condition in the board's hands¹². The trustees may make any part of their premises available for the board's use, and may arrange for services to be rendered to the board by British Museum staff, on such terms, including terms as to payment, as may be agreed with the board¹³.

1 Ie the date on which the British Library Act 1972 s 3 came into force: see s 3(1), (2); and the British Library (Appointed Day) Order 1973, SI 1973/1125.

2 As to the trustees of the British Museum see PARA 827.

3 British Library Act 1972 s 3(1)(a).

4 British Library Act 1972 s 3(1)(b).

5 British Library Act 1972 s 3(1), (2). As to the British Library see PARA 906. As to the British Library Board see PARA 908.

6 As to the meaning of 'writing' see PARA 805 note 14.

7 British Library Act 1972 s 3(3).

8 British Library Act 1972 s 3(4).

9 British Library Act 1972 s 3(4). As to the British Museum Act 1963 see PARAS 825-834.

10 British Library Act 1972 s 3(4) (amended for this purpose by the National Heritage Act 1983 s 40, Sch 5 para 7).

11 See the Museums and Galleries Act 1992 s 6; and PARA 820.

12 British Library Act 1972 s 3(5).

13 British Library Act 1972 s 3(6).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(iv) The British Library/B. THE BRITISH LIBRARY BOARD/908. Constitution and proceedings of the British Library Board.

B. THE BRITISH LIBRARY BOARD

908. Constitution and proceedings of the British Library Board.

The British Library Board consists of a chairman and not less than eight, nor more than 13, other members¹. The board is a body corporate with perpetual succession and a common seal². The board has power to regulate its own procedure³. The validity of any of its proceedings is not affected by any vacancy among its members or by any defect in the appointment of any member⁴.

The application of the board's seal must be authenticated by the signature of the secretary or of some other person authorised by the board, either generally or specially, to act for that purpose⁵. Any document purporting to be a document duly executed under the board's seal, or to be signed on its behalf is receivable in evidence and must, unless the contrary is proved, be deemed to be so executed or, as the case may be, so signed⁶.

Not later than such date in each year as the Secretary of State⁷ may determine, the board must send him a report of its proceedings and activities during the previous 12 months⁸, and the Secretary of State must lay copies of the report before each House of Parliament⁹.

1 See the British Library Act 1972 s 2(1) (s 2(1) amended by SI 1992/1311). As to the appointment of the members of the board see further the British Library Act 1972 s 2(1)(a)-(c), (2), (2A) (s 2(1)(bb), (2A) added by SI 2000/1102; the British Library Act 1972 s 2(2) amended by SI 1992/1311). As to tenure of office of members see the British Library Act 1972 Schedule paras 2-4 (Schedule paras 3, 5 amended by SI 1992/1311). As to the payment of remuneration, allowances and pensions to members of the board see the British Library Act 1972 Schedule para 5 (as so amended). The chairman of the board is disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt III; and PARLIAMENT vol 78 (2010) PARA 908.

2 British Library Act 1972 Schedule para 1. As to bodies corporate see COMPANIES vol 14 (2009) PARA 2; CORPORATIONS vol 9(2) (2006 Reissue) PARA 1101 et seq. As to the corporate seal see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1122 et seq. The board, so far as it is a charity, and any institution which is administered by or on its behalf and established for general or special purposes, is an exempt charity for the purposes of the Charities Act 1993: see ss 3, 96(1), Sch 2; and CHARITIES vol 8 (2010) PARA 315.

3 British Library Act 1972 Schedule para 7(2). As to quorum see Schedule para 7(1).

4 British Library Act 1972 Schedule para 8.

5 British Library Act 1972 Schedule para 9. As to the secretary see PARA 909.

6 British Library Act 1972 Schedule para 10.

7 As to the Secretary of State see PARA 802 note 2.

8 As to the meaning of 'month' see PARA 803 note 11.

9 British Library Act 1972 s 4(3) (amended by SI 1992/1311). As to laying documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(iv) The British Library/B. THE BRITISH LIBRARY BOARD/909. Staff.

909. Staff.

The British Library Board¹ must appoint a secretary and may appoint such other officers as it may determine, and may pay to them and other employees such remuneration and allowances as the Secretary of State² may determine with the approval of the Treasury³. In the case of such officers and other persons employed by the board (not being members of the board) as it may determine with the Treasury's approval, the board must pay such pensions, allowances or gratuities to or in respect of them as may be so determined, make such payments towards the provision of such pensions, allowances or gratuities as may be so determined or provide and maintain such schemes (whether contributory or not) for the payment of such pensions, allowances or gratuities as may be so determined⁴.

The board must seek consultation with any organisation appearing to it to be appropriate with a view to the conclusion between the board and that organisation of such agreements as appear to the parties to be desirable with respect to the establishment and maintenance of machinery for:

- 197 (1) the settlement by negotiation of terms and conditions of employment of the board's employees with provision for reference to arbitration in default of such settlement in such cases as may be determined by or under the agreement⁵; and
- 198 (2) the promotion and encouragement of measures affecting the safety, health and welfare of the board's employees and the discussion of other matters of mutual interest to the board and such persons including efficiency in the operation of the board's services⁶.

1 As to the British Library Board see PARA 908.

2 As to the Secretary of State see PARA 802 note 2.

3 British Library Act 1972 Schedule para 12(1) (amended by SI 1981/1670; SI 1992/1311). As to the meaning of 'Treasury' see PARA 809 note 4. As to the provision made in respect of the employment by the board of persons who before 1 July 1973 (ie the appointed day: see PARA 907 note 1) were employed either in the civil service or by the trustees of the British Museum see the British Library Act 1972 Schedule para 13 (amended by the Employment Protection (Consolidation) Act 1978 s 159(2), (3), Sch 16 para 15, Sch 17; and by the Employment Rights Act 1996 s 240, Sch 1 para 4).

4 British Library Act 1972 Schedule para 12(2) (amended by SI 1981/1670).

5 See the British Library Act 1972 s 6(1).

6 See the British Library Act 1972 s 6(2).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(iv) The British Library/B. THE BRITISH LIBRARY BOARD/910. Incidental functions of the British Library Board.

910. Incidental functions of the British Library Board.

It is within the capacity of the British Library Board as a statutory corporation¹ to do all such things, and enter into all such transactions, as are incidental or conducive to the discharge of its functions; but the board does not have the power to borrow money². The board may frame, and vary and revoke from time to time, rules relating to the exercise by it of any power or the manner of entering into any transaction, and, with the approval of the Secretary of State³, the rules may provide for the imposition of charges for any services provided by the board or for the loan or use of any item from its collections⁴.

The board may acquire or dispose of any property, whether or not for the purposes of its collections, subject to the following conditions⁵:

- 199 (1) the board's power to dispose of an article transferred to it with the British Museum Library⁶ is exercisable only if:
 - 13
 - 20. (a) it is a duplicate of another article in the board's collections, whether or not so transferred⁷; or
 - 21. (b) it appears to the board to have been printed not earlier than 1850, and a copy of it made by photography or a process akin to photography is held by the board⁸; or
 - 22. (c) in the board's opinion it is unfit to be retained in its collections and can be disposed of without detriment to the interests of students⁹; or
 - 23. (d) the disposal is an exercise of the power conferred¹⁰ by the Museums and Galleries Act 1992¹¹;
 - 14
 - 200 (2) where any property in the board's hands, whether or not transferred to it from the British Museum Library¹², is subject to any trust or condition:
 - 15
 - 24. (a) the board must not dispose of or deal with it in any manner inconsistent with the trust or condition, except as provided¹³ by the Museums and Galleries Act 1992¹⁴; and
 - 25. (b) it must be subject to the same trust or condition in the hands of any person¹⁵ acquiring it from the board¹⁶.
 - 16

The board is a specified transferor and transferee for the purposes of the general powers of transfer between collections¹⁷, and a specified body for the purposes of the statutory provision for vesting of gifts to the nation where the donor has not specified a destination¹⁸. The Secretary of State may transfer land to the board¹⁹.

In certain circumstances the board may transfer an object from its collections under the Holocaust (Return of Cultural Objects) Act 2009²⁰.

1 As to the British Library Board see PARA 908.

2 British Library Act 1972 Schedule para 11(1). As to the board's general functions see PARA 906.

3 As to the Secretary of State see PARA 802 note 2.

- 4 British Library Act 1972 Schedule para 11(2) (amended by SI 1992/1311).
- 5 See the British Library Act 1972 Schedule para 11(3).
- 6 It transferred to the board under the British Library Act 1972 s 3(1)(a): see PARA 907.
- 7 British Library Act 1972 Schedule para 11(4)(a).
- 8 British Library Act 1972 Schedule para 11(4)(b).
- 9 British Library Act 1972 Schedule para 11(4)(c) (amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 12(1)).
- 10 It by the Museums and Galleries Act 1992 s 6: see PARA 820.
- 11 British Library Act 1972 Schedule para 11(4)(d) (added by the Museums and Galleries Act 1992 Sch 8 para 12(1)).
- 12 It under the British Library Act 1972 s 3(1)(a): see PARA 907.
- 13 It by the Museums and Galleries Act 1992 s 6: see PARA 820.
- 14 British Library Act 1972 Schedule para 11(5)(a) (amended by the Museums and Galleries Act 1992 Sch 8 para 12(2)).
- 15 As to the meaning of 'person' see PARA 803 note 16.
- 16 British Library Act 1972 Schedule para 11(5)(b).
- 17 See the Museums and Galleries Act 1992 s 6, Sch 5; and PARA 820.
- 18 See the Museums and Galleries Act 1992 s 7; and PARA 821.
- 19 See the Museums and Galleries Act 1992 s 8, Sch 6; and PARA 822. The British Library building at St Pancras and 3.4 hectares of land were transferred to the board on 1 July 1997: see 297 HC Official Report (6th series), 2 July 1997, written answers col 184.
- 20 See PARA 1103.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(iv) The British Library/B. THE BRITISH LIBRARY BOARD/911. Advisory councils.

911. Advisory councils.

In accordance with directions of the Secretary of State¹, given after consultation with the British Library Board², the board must constitute advisory councils with responsibility for providing advice to the board, or to any department of the British Library³, on such matters as the Secretary of State or the board may determine from time to time⁴. An advisory council constituted by the board must consist of a chairman and such number of other members as the Secretary of State may specify in his directions⁵.

1 As to the Secretary of State see PARA 802 note 2.

2 As to the British Library Board see PARA 908.

3 As to the British Library see PARA 906.

4 British Library Act 1972 s 2(3) (amended by SI 1992/1311).

5 British Library Act 1972 Schedule para 14(1) (amended by SI 1992/1311). As to the payment of fees and allowances to the chairman and members of a council see the British Library Act 1972 Schedule para 14(2) (amended by SI 1981/1670; SI 1992/1311).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(iv) The British Library/B. THE BRITISH LIBRARY BOARD/912. Finance and accounts.

912. Finance and accounts.

The Secretary of State¹ must, out of money provided by Parliament², make to the British Library Board³ such payments as the Treasury⁴ may approve towards expenditure incurred by the board, whether in respect of its management of the British Library (including the acquisition of new items for the board's collections), or of general administration, or otherwise; and so far as relates to the use and expenditure of sums so paid to the board, the board must act in accordance with such directions as may from time to time be given to it by the Secretary of State⁵.

Money received by the board in any financial year⁶, whether in respect of property disposed of, or services provided, or otherwise, must be applied by the board in such manner as the Secretary of State may, with Treasury approval, direct⁷.

The board must keep proper accounts and other records and, in respect of each financial year, prepare statements of account in such form as the Secretary of State may, with Treasury approval, direct⁸. The statements must be submitted to the Secretary of State on or before 30 November next following the expiration of the financial year in question, and must be transferred by him to the Comptroller and Auditor General, who must examine and certify them and lay copies of them, together with his report on them, before each House of Parliament⁹.

1 As to the Secretary of State see PARA 802 note 2.

2 As to the provision of money by Parliament see PARLIAMENT vol 78 (2010) PARA 804.

3 As to the British Library Board see PARA 908. As to the general functions of the board see PARA 906; and as to its incidental functions see PARA 910.

4 As to the meaning of 'Treasury' see PARA 809 note 4.

5 British Library Act 1972 s 5(1) (amended by SI 1992/1311).

6 'Financial year' means the 12 months ending 31 March: see the Interpretation Act 1978 s 5, Sch 1.

7 British Library Act 1972 s 5(2) (amended by SI 1992/1311). Any such direction may require the whole or any part of that money to be paid into the Consolidated Fund: British Library Act 1972 s 5(2). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711.

8 British Library Act 1972 s 5(3) (amended by SI 1992/1311).

9 British Library Act 1972 s 5(3) (amended by SI 1992/1311). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726. As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/A. INTRODUCTION/913. The legislation.

(v) The Local Authority Library Service

A. INTRODUCTION

913. The legislation.

The local authority library service was put on a completely new basis by the Public Libraries and Museums Act 1964¹, which imposes a duty to provide an efficient and comprehensive library service for all persons desiring to make use of it on those local authorities which are library authorities². The service in England is under the supervision of the Secretary of State and the Library Advisory Council for England, and in Wales of the Welsh Ministers³.

The Act extends to the Isles of Scilly with modifications⁴. The Act has effect notwithstanding any inconsistent provision in a local Act, and any public library maintained by a library authority on 1 April 1965⁵ under a power conferred by a local Act must after that date be treated as maintained under the Public Libraries and Museums Act 1964 and not under the power of the local Act⁶. Except for these provisions, nothing in the 1964 Act may be taken to derogate from the provisions of any local Act⁷.

The Public Lending Right Act 1979 and the scheme made thereunder impose certain obligations on local library authorities⁸.

1 See the Public Libraries and Museums Act 1964 ss 1-11, Sch 1; and PARA 914 et seq.

2 See the Public Libraries and Museums Act 1964 s 7(1); and PARA 929. As to library authorities see PARA 926.

3 See the Public Libraries and Museums Act 1964 ss 1, 2; and PARA 914.

4 See the Public Libraries and Museums Act 1964 s 24(1), (2) (s 24(1) amended by the Local Government Act 1972 s 208(3)(j)); and the Isles of Scilly (Public Libraries and Museums) Order 1965, SI 1965/511.

5 Ie the date on which the Public Libraries and Museums Act 1964 came into force: see ss 23, 26(7).

6 Public Libraries and Museums Act 1964 s 23. As to local Acts see STATUTES vol 44(1) (Reissue) PARA 1213.

7 See the Public Libraries and Museums Act 1964 s 23.

8 See PARA 897.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/B. ADMINISTRATION/(A) In general/914. Supervision of libraries.

B. ADMINISTRATION

(A) IN GENERAL

914. Supervision of libraries.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹ must superintend and promote the improvement of the public library service provided by local authorities, and secure the proper discharge by local authorities of the functions in relation to libraries conferred on them as library authorities under the Public Libraries and Museums Act 1964². Every library authority must furnish such information, and provide such facilities for the inspection of library premises, stocks and records, as the Secretary of State or, as appropriate the Welsh Ministers may require for carrying out this duty³. In each year, the Secretary of State must lay before each House of Parliament, and the Welsh Ministers must lay before the National Assembly for Wales, a report on the exercise of his or their functions under the Public Libraries and Museums Act 1964⁴.

There is a Library Advisory Council for England whose duty it is to advise the Secretary of State upon such matters connected with the provision or use of library facilities whether under the Public Libraries and Museums Act 1964 or otherwise as it thinks fit, and upon any questions referred to it by him⁵. Council members are appointed by the Secretary of State and he must appoint a member of each council to be its chairman, and must appoint an officer of the department of the Secretary of State to be its secretary⁶. The council determines its own procedure but the quorum at council meetings is such as the Secretary of State may determine⁷.

As soon as might be after 1 April 1965⁸, the Secretary of State was to designate by order as library regions areas together extending to the whole of England and Wales⁹. After consultation with the library authorities within the region, the Secretary of State or, in relation to Wales, the Welsh Ministers must make a scheme for each library region providing for:

- 201 (1) the constitution, incorporation and functioning of a library council for the region, consisting of persons¹⁰ representing each of the authorities and such other persons as may be provided for by the scheme, and having a duty to make and supervise the working of arrangements for facilitating the co-operation of those authorities with one another and with other bodies within or outside the region having functions in relation to libraries¹¹; and
- 202 (2) the observance by each of the authorities of any requirements made by the library council, including requirements as to the payment by the authority of contributions towards the expenses of the council¹²,

and containing such other provisions directed to the promotion of inter-library co-operation within and outside the region as may appear to the Secretary of State or the Welsh Ministers to be expedient¹³. At least a majority of the library council for a region must consist of members of library authorities within the region, and an authority none of whose members is included in the library council must be represented on the council by such of the persons so included as may be determined in accordance with the scheme establishing the council¹⁴.

With a view to improving the efficiency of the public library service or promoting its development, the Secretary of State or, in relation to Wales, the Welsh Ministers may require any library council established for a library region to enter into and carry into effect arrangements with another such council or with any other body having functions in relation to libraries¹⁵.

1 The functions of the Secretary of State under the Public Libraries and Museums Act 1964 in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 Public Libraries and Museums Act 1964 s 1(1) (s 1 amended by SI 1992/1311). As to the meanings of 'local authority' and 'library authority' see PARA 926.

3 Public Libraries and Museums Act 1964 s 1(2) (as amended: see note 2).

4 See the Public Libraries and Museums Act 1964 s 17; National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 86, Sch 11 paras 30, 32. As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941. As to the laying of documents by the Welsh Ministers before the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

5 See the Public Libraries and Museums Act 1964 s 2(1) (substituted by SI 2004/803). As to the meaning of 'England' see PARA 804 note 2.

6 Public Libraries and Museums Act 1964 s 2(2) (amended by SI 1981/207; SI 1992/1311; SI 2004/803). As to the appointment of members and tenure of office see further the Public Libraries and Museums Act 1964 s 2(3)-(4) (both amended by SI 2004/803; Public Libraries and Museums Act 1964 s 2(4) further amended by SI 1992/1311).

7 See the Public Libraries and Museums Act 1964 s 2(5) (amended SI 1992/1311; SI 2004/803).

8 Is the commencement date of the Public Libraries and Museums Act 1964: see ss 3(1), 26(7).

9 See the Public Libraries and Museums Act 1964 s 3(1) (s 3 amended by SI 1992/1311). In so far as this power remains to be exercised in relation to Wales it is now exercisable by the Welsh Ministers: see note 1. A power conferred by the Public Libraries and Museums Act 1964 s 3 to make an order or a scheme is exercisable by statutory instrument which is subject, in the case of the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament: s 3(4) (as so amended). As to the equivalent procedure in relation to subordinate legislation made by the Welsh Ministers see the Government of Wales Act 2006 Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Any such order or scheme may be varied or revoked by a further order or scheme, provided that, before varying or revoking a scheme, the Secretary of State or the Welsh Ministers must consult the library council in question as well as the relevant library authorities: s 3(4) (as so amended). At the date at which this volume states the law no such order or scheme had been made.

10 As to the meaning of 'person' see PARA 803 note 16.

11 Public Libraries and Museums Act 1964 s 3(2)(a).

12 Public Libraries and Museums Act 1964 s 3(2)(b).

13 Public Libraries and Museums Act 1964 s 3(2) (as amended: see note 9). See also note 9.

14 Public Libraries and Museums Act 1964 s 3(3).

15 Public Libraries and Museums Act 1964 s 3(5) (as amended: see note 9).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/B. ADMINISTRATION/(A) In general/915. Default powers of Secretary of State and the Welsh Ministers.

915. Default powers of Secretary of State and the Welsh Ministers.

If:

- 203 (1) a complaint is made to the Secretary of State or, in relation to Wales, the Welsh Ministers¹ that any library authority² has failed to carry out duties relating to the public library service imposed on it by or under the Public Libraries and Museums Act 1964³; or
- 204 (2) the Secretary of State or the Welsh Ministers is or are of opinion that an investigation ought to be made as to whether any such failure by a library authority has occurred⁴,

and, after causing a local inquiry⁵ to be held into the matter, the Secretary of State or the Welsh Ministers is or are satisfied that there has been such a failure by the library authority, he or they may make an order declaring it to be in default and directing it for the purpose of removing the default to carry out such of its duties, in such manner and within such time, as may be specified in the order⁶. If the authority fails to comply with any requirement of the order, instead of enforcing it by mandatory order⁷ or otherwise, the Secretary of State or the Welsh Ministers may⁸:

- 205 (a) if the authority is a joint board⁹, make an order providing that on a specified date the board is dissolved and that on its dissolution, the authorities constituting the board will again become library authorities¹⁰ and the functions relating to the public library service of such of those authorities as may be specified in that behalf in the order are transferred to the Secretary of State or, as the case may be, the Welsh Ministers¹¹; or
- 206 (b) in any other case, make an order providing that the authority's functions relating to the public library service are transferred to the Secretary of State or, as the case may be, Welsh Ministers¹².

Where an authority's functions have been transferred to the Secretary of State or the Welsh Ministers by such an order, he or they may at any time by order transfer them back to the authority, and the order may contain such supplemental provisions as may appear to him or them to be expedient for that purpose¹³.

1 The functions of the Secretary of State under the Public Libraries and Museums Act 1964 in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 As to the meaning of 'library authority' see PARA 926.

3 Public Libraries and Museums Act 1964 s 10(1)(a) (s 10 amended by SI 1992/1311).

4 Public Libraries and Museums Act 1964 s 10(1)(b) (as amended: see note 3).

5 The Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, apply to any such inquiry: see r 3; and PARA 916 et seq.

6 Public Libraries and Museums Act 1964 s 10(1) (as amended: see note 3).

7 The Public Libraries and Museums Act 1964 s 10(2) refers to 'mandamus' which is now known as a mandatory order: see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq.

8 A power conferred by the Public Libraries and Museums Act 1964 s 10(2) to make an order is exercisable by statutory instrument, which, in the case of an order made by the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament: see s 10(3). As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516. As to the procedure in relation to subordinate legislation made by the Welsh Ministers see the Government of Wales Act 2006 Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

9 As to joint boards see PARA 927.

10 Public Libraries and Museums Act 1964 s 10(2)(b)(i) (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 24(1)(d), Sch 18; Local Government Act 1972 ss 208(3), 272(1), Sch 30).

11 Public Libraries and Museums Act 1964 s 10(2)(b)(iii).

12 Public Libraries and Museums Act 1964 s 10(2)(c). Where the Secretary of State or the Welsh Ministers has or have by order transferred to himself or themselves any functions of a council or joint board, any expenses incurred by him or them in discharging its functions must be paid in the first instance out of money provided by Parliament; but the amount of those expenses as certified by him or them must on demand be paid to him or them by the body in default, and are recoverable by him or them from that body as a debt due to the Crown, and that body has the like power of raising the money required as it has of raising money for defraying expenses incurred directly by it: Public Health Act 1936 s 324(1) (amended by the Public Health (Control of Disease) Act 1984 s 78, Sch 3; applied with modifications by the Public Libraries and Museums Act 1964 s 10(5)). The payment of any such expenses is, to such extent as may be sanctioned by the Secretary of State or the Welsh Ministers, a purpose for which a library authority or joint board may borrow money in accordance with the statutory provisions relating to borrowing by such an authority or board: Public Health Act 1936 s 324(2) (as so amended and applied).

13 Public Libraries and Museums Act 1964 s 10(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/B. ADMINISTRATION/(B) Public Inquiries/916. Powers to hold public inquiry.

(B) PUBLIC INQUIRIES

916. Powers to hold public inquiry.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹ may hold an inquiry into any matter relating to the functions of a library authority² under the Public Libraries and Museums Act 1964³. The procedure to be followed in any such inquiry is prescribed by rules made by the Lord Chancellor⁴. The Secretary of State or, as appropriate, the Welsh Ministers appoints the person to hold the inquiry (the 'appointed person')⁵.

1 The functions of the Secretary of State under the Public Libraries and Museums Act 1964 and the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 As to the meaning of 'library authority' see PARA 926.

3 Public Libraries and Museums Act 1964 s 16 (amended by the Local Government Act 1972 s 208(3)(h); SI 1992/1311). There is also a specific power to hold a local inquiry under the Public Libraries and Museums Act 1964 s 10(1): see PARA 915.

4 See the Tribunals and Inquiries Act 1992 ss 9, 15; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARAS 56-57. At the date at which this volume states the law, no such rules had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627 (see PARA 917 et seq) have effect as if so made.

5 'Appointed person' means the person appointed by the Secretary of State or the Welsh Ministers to hold the inquiry; and 'inquiry' means an inquiry to which the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, apply: r 2. The Rules apply in relation to any inquiry which is caused by the Secretary of State or the Welsh Ministers to be held in respect of a library authority pursuant to the Public Libraries and Museums Act 1964 s 10(1) (see PARA 915) or s 16 (see the text to notes 1-3): Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 3. The Secretary of State, the Welsh Ministers or the appointed person may at any time in any particular case allow further time for the taking of any step which is to be taken by virtue of the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, and references therein to a day by which, or a period within which, any step is to be taken must be construed accordingly: r 15.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/B. ADMINISTRATION/(B) Public Inquiries/917. Preliminary procedures.

917. Preliminary procedures.

Where the Secretary of State or, in relation to Wales, the Welsh Ministers¹ intend to cause an inquiry² to be held, he or they must give written notice³ to the library authority⁴ and to such other persons⁵ or classes of persons as he or they may decide, and must as soon as practicable thereafter publish in at least two newspapers circulating in the area in respect of which the library authority is obliged to carry out its duties a notice of the inquiry⁶. Not later than four weeks after the relevant date⁷, he or they must serve a statement of case⁸ on the library authority and on each person on whom the relevant notice was served and must send to the appointed person a copy of the statement⁹.

Not later than eight weeks after the relevant date, any person may serve a statement of case on the Secretary of State or the Welsh Ministers and on the library authority and also send it to the appointed person¹⁰. Not later than seven days after receipt of the statement of case the Secretary of State or the Welsh Ministers must send a copy of the statement to each other person on whom the relevant notice was served¹¹.

The appointed person may require any person who has served a statement of case in accordance with these provisions to provide such further information about the matters concerned in the statement as he may specify¹². The library authority must afford to any person who so requests a reasonable opportunity to inspect and, when practicable, take copies of any statement of case or other document which, or a copy of which, has been served on the authority in accordance with any of these provisions, and of its statement of case together with a copy of any document, or of the relevant part of any document, referred to in the list comprised in that statement or otherwise served by the authority pursuant to these provisions; and must specify in its statement of case the time and place at which the opportunity will be afforded¹³.

1 The functions of the Secretary of State under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 As to the meaning of 'inquiry' see PARA 916 note 5.

3 As to the meaning of 'written' see PARA 805 note 14. Notices or documents required to be served or sent under any of the provisions of the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, may be sent by post: r 16. Where an Act or subordinate legislation authorises or requires any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post: see the Interpretation Act 1978 ss 7, 23(1); and **STATUTES** vol 44(1) (Reissue) PARA 1388. A requirement to send a document by post is not confined to sending it by the Post Office postal system: see the Postal Services Act 2000 s 127(4), Sch 8 Pt 1; and **POST OFFICE**.

4 As to the meaning of 'library authority' see PARA 926.

5 As to the meaning of 'person' see PARA 803 note 16.

6 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 4.

7 'Relevant date' means the date of the Secretary of State's or the Welsh Ministers' written notice to the library authority of the intention to cause an inquiry to be held; and 'relevant notice' means that notice: Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 2. As to the power to extend time limits under the rules see PARA 916 note 5.

8 'Statement of case' means a written statement which contains full particulars of the case which a person proposes to put forward at an inquiry, and a list of any documents which that person intends to refer to or put in evidence: Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 2. Any person serving a statement of case must serve with it a copy of any document, or of the relevant part of any document, referred to in the written statement: r 5(4).

9 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 5(1). As to the meaning of 'appointed person' see PARA 916 note 5.

10 See the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 5(2).

11 See the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 5(2). Where the person serving the statement of case is not a person on whom the relevant notice was served, the Secretary of State or the Welsh Ministers must also send a copy of his statement of case to such person within seven days of receipt of that person's statement of case or, if he or they think fit, give notice in writing to that person within that period stating the times and places at which he may inspect the statement of case and, where practicable, take copies of it: r 5(2).

12 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 5(3).

13 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 5(5).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/B. ADMINISTRATION/(B) Public Inquiries/918. Pre-inquiry meetings.

918. Pre-inquiry meetings.

The appointed person¹ may hold a pre-inquiry meeting², or if appropriate more than one meeting, where he considers it desirable and must arrange for not less than 14 days' written notice³ of any such meeting to be given to the Secretary of State or, as appropriate, the Welsh Ministers⁴, the library authority⁵, any person⁶ on whom the relevant notice⁷ was served and any other person whose presence at the meeting appears to him to be desirable⁸.

The appointed person must preside at the pre-inquiry meeting and must determine the matters to be discussed and the procedure to be followed⁹. He may require any person present at the meeting who, in his opinion, is behaving in a disruptive manner to leave it and he may refuse to permit that person to return or to attend any further pre-inquiry meeting, or may permit him to return or to attend only on such conditions as he may specify¹⁰.

1 As to the meaning of 'appointed person' see PARA 916 note 5.

2 'Pre-inquiry meeting' means a meeting held before an inquiry to consider what may be done with a view to securing that it is conducted efficiently and expeditiously: Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 2. As to the meaning of 'inquiry' see PARA 916 note 5.

3 As to the meaning of 'written' see PARA 805 note 14. As to the service of notices see PARA 917 note 3. As to the power to extend time limits under the rules see PARA 916 note 5.

4 The functions of the Secretary of State under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

5 As to the meaning of 'library authority' see PARA 926.

6 As to the meaning of 'person' see PARA 803 note 16.

7 As to the meaning of 'relevant notice' see PARA 917 note 7.

8 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 6(1).

9 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 6(2). He may arrange the inquiry timetable at the pre-inquiry meeting: see PARA 919.

10 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 6(2).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/B. ADMINISTRATION/(B) Public Inquiries/919. Inquiry timetable; date and notification of inquiry.

919. Inquiry timetable; date and notification of inquiry.

The appointed person¹ may arrange a timetable for the proceedings at, or at part of, the inquiry² at any pre-inquiry meeting³ or, where no such meeting is held, at any other time⁴. He must notify the timetable to the persons entitled to appear at the inquiry⁵ and may at any time vary the timetable⁶. He may specify in such a timetable a date by which any proof of evidence and summary required⁷ to be sent to him must be so sent⁸.

The date fixed by the Secretary of State or, as the case may be, the Welsh Ministers⁹ for the holding of the inquiry must be not later than 22 weeks after the relevant date¹⁰ or, where the Secretary of State or Welsh Ministers is satisfied that in all the circumstances of the case it is impracticable to hold the inquiry within that period, the earliest practicable date after the end of that period¹¹. Unless the Secretary of State or the Welsh Ministers agrees a lesser period of notice with the library authority¹², he or they must give not less than 28 days' written¹³ notice of the date, time and place fixed for the holding of an inquiry to every person entitled to appear at the inquiry¹⁴.

The Secretary of State or the Welsh Ministers may require the library authority to post a notice of the inquiry, within such period as he or they may specify, in a conspicuous place in all the public libraries in its area, and not less than 14 days before the date fixed for the holding of the inquiry he or they must publish in at least two of the newspapers circulating in the area in respect of which the library authority is obliged to carry out its duties a notice of the inquiry¹⁵.

- 1 As to the meaning of 'appointed person' see PARA 916 note 5.
- 2 As to the meaning of 'inquiry' see PARA 916 note 5.
- 3 As to the meaning of 'pre-inquiry meeting' see PARA 918 note 2.
- 4 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 7(1).
- 5 As to the persons entitled to appear see PARA 920. As to the service of notices see PARA 917 note 3. As to the meaning of 'person' see PARA 803 note 16.
- 6 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 7(1).
- 7 Ie by the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 10(1): see PARA 921.
- 8 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 7(2).
- 9 The functions of the Secretary of State under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.
- 10 As to the meaning of 'relevant date' see PARA 917 note 7. As to the power to extend time limits under the rules see PARA 916 note 5.
- 11 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 8(1).
- 12 As to the meaning of 'library authority' see PARA 926.
- 13 As to the meaning of 'written' see PARA 805 note 14.

14 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 8(2). The Secretary of State or the Welsh Ministers may vary the date fixed for the holding of an inquiry, whether or not the date so varied is within the period mentioned in r 8(1) (see the text to notes 9-11), and r 8(2) applies to a date so varied as it applies to the date originally fixed: r 8(3). The Secretary of State or the Welsh Ministers may vary the time or place for the holding of an inquiry and must give such notice of any such variation as appears to him or them to be reasonable: r 8(4).

15 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 8(5). Every notice of an inquiry so posted or published must contain a clear statement of the date, time and place of the inquiry, of the powers enabling the Secretary of State or the Welsh Ministers to cause the inquiry to be held and of the subject matter of the inquiry: r 8(6).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/B. ADMINISTRATION/(B) Public Inquiries/920. Appearances at inquiry.

920. Appearances at inquiry.

The persons¹ entitled to appear at an inquiry² are the Secretary of State or, as appropriate, the Welsh Ministers³, the library authority⁴, and any person on whom notice of the inquiry has been served⁵ or who has served a statement of case⁶ on the Secretary of State or the Welsh Ministers⁷. Nothing in these provisions, however, prevents the appointed person⁸ from permitting any other person to appear at the inquiry, and such permission must not be unreasonably withheld⁹.

Any person entitled or permitted to appear may do so on his own behalf or be represented by counsel, solicitor or any other person¹⁰. The appointed person may allow one or more persons to appear for the benefit of some or all of any persons having a similar interest in the matter under inquiry¹¹.

1 As to the meaning of 'person' see PARA 803 note 16.

2 As to the meaning of 'inquiry' see PARA 916 note 5.

3 The functions of the Secretary of State under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 As to the meaning of 'library authority' see PARA 926.

5 Ie under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 4: see PARA 917.

6 Ie under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 5(2): see PARA 917. As to the meaning of 'statement of case' see PARA 917 note 8.

7 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 9(1).

8 As to the meaning of 'appointed person' see PARA 916 note 5.

9 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 9(2).

10 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 9(3).

11 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 9(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/B. ADMINISTRATION/(B) Public Inquiries/921. Proofs of evidence.

921. Proofs of evidence.

A person entitled to appear at the inquiry¹ who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence must send a copy of the proof to the appointed person². The Secretary of State or, as the case may be, the Welsh Ministers³, the library authority⁴, and any other person so directed by the appointed person must also supply a written summary of his, their or its proof⁵. The proof and any summary must be sent to the appointed person not later than three weeks before the date fixed for the holding of the inquiry⁶, or, where a timetable has been arranged⁷ which specifies a date by which the proof and any summary must be sent to the appointed person, that date⁸.

Where the Secretary of State, the Welsh Ministers or the library authority sends a copy of a proof of evidence and a summary to the appointed person, they must at the same time send a copy to every other person entitled to appear at the inquiry; and where any other person so sends such a copy proof and any summary he must at the same time send a copy to the Secretary of State or the Welsh Ministers and the library authority⁹. The Secretary of State, the Welsh Ministers and the library authority must afford to any person who so requests a reasonable opportunity to inspect and, where practicable, to take copies of any document sent to or by them in accordance with any of these provisions¹⁰.

Where the appointed person so directs, only the written summary of the proof of evidence may be read at the inquiry¹¹.

1 As to the persons entitled to appear see PARA 920. As to the meaning of 'person' see PARA 803 note 16. As to the meaning of 'inquiry' see PARA 916 note 5.

2 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 10(1). Any person so required to send a copy of a proof of evidence to any other person must send with it a copy of the whole, or the relevant part, of any document referred to in it and not previously supplied under r 5(4) (see PARA 917): r 10(5). As to the meaning of 'appointed person' see PARA 916 note 5.

3 The functions of the Secretary of State under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 As to the meaning of 'library authority' see PARA 926.

5 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 10(1).

6 As to the date fixed for the inquiry see PARA 919. As to the power to extend time limits under the rules see PARA 916 note 5.

7 Ie pursuant to the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 7: see PARA 919.

8 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 10(2).

9 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 10(3).

10 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 10(6).

11 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 10(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/B. ADMINISTRATION/(B) Public Inquiries/922. Procedure at inquiry.

922. Procedure at inquiry.

Except as otherwise provided by the statutory rules¹, the appointed person² determines the procedure at the inquiry³. He must conduct the inquiry in public unless for any reason he determines that the inquiry or any part of it must be in private⁴.

Unless in any particular case the appointed person with the consent of the Secretary of State or, as the case may be, the Welsh Ministers⁵ otherwise determines, the Secretary of State or the Welsh Ministers begin and have the right of final reply; and the other persons entitled or permitted to appear⁶ are heard in such order as the appointed person may determine⁷.

A person entitled to appear at an inquiry is entitled to call evidence and the Secretary of State or the Welsh Ministers and the library authority⁸ are entitled to cross-examine any person giving evidence, but the calling of evidence and the cross-examination of persons giving evidence are otherwise⁹ at the appointed person's discretion¹⁰. The appointed person may refuse to permit the giving or production of evidence¹¹, the cross-examination of persons giving evidence¹², or the presentation of any other matter¹³, which he considers to be irrelevant or repetitious; but where he so refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any written evidence or other matter in writing¹⁴ before the close of the inquiry¹⁵.

Where a person gives evidence at an inquiry by reading a summary of his evidence¹⁶, the proof of evidence¹⁷ must, unless the person required to supply the summary notifies the appointed person that he now wishes to rely on the contents of that summary only, be treated as tendered in evidence, and the person whose evidence the proof contains is then subject to cross-examination on it to the same extent as if it were evidence he had given orally¹⁸.

The appointed person may direct that facilities must be afforded to any person appearing at an inquiry to take or obtain copies of documentary evidence open to public inspection¹⁹. The appointed person may require any person appearing or present at an inquiry who, in his opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return, or may permit him to return only on such conditions as he may specify; but any such person may submit to him any evidence or other matter in writing before the close of the inquiry²⁰.

The appointed person may allow any person to alter or add to a statement of case previously served²¹ so far as may be necessary for the purposes of the inquiry; but he must (if necessary by adjourning the inquiry) give any other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any fresh matter or document²². The appointed person may proceed with an inquiry in the absence of any person entitled to appear at it²³. He may take into account any written representation or evidence or any other document received by him from any person before an inquiry opens or during the inquiry provided that he discloses it at the inquiry²⁴.

The appointed person may from time to time adjourn the inquiry and, if the date, time and place of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice is required²⁵.

1 Ie by the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627.

2 As to the meaning of 'appointed person' see PARA 916 note 5.

3 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(1). As to the meaning of 'inquiry' see PARA 916 note 5.

4 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(2).

5 The functions of the Secretary of State under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

6 As to the persons entitled or permitted to appear see PARA 920. As to the meaning of 'person' see PARA 803 note 16.

7 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(3).

8 As to the meaning of 'library authority' see PARA 926.

9 Ie subject to the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(3), (5), (6), (8): see the text to notes 6-7, 11-18, 20.

10 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(4).

11 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(5)(a).

12 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(5)(b).

13 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(5)(c).

14 As to the meanings of 'writing' and 'written' see PARA 805 note 14.

15 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(5).

16 Ie in accordance with the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 10(4): see PARA 921.

17 Ie the proof of evidence referred to in the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 10(1): see PARA 921.

18 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(6).

19 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(7).

20 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(8).

21 Ie under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 5: see PARA 917. As to the meaning of 'statement of case' see PARA 917 note 8.

22 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(9).

23 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(10).

24 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(11).

25 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 11(12).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/B. ADMINISTRATION/(B) Public Inquiries/923. Site inspections.

923. Site inspections.

The appointed person¹ may make an unaccompanied inspection of any premises used or formerly used by the library authority² as a public library and referred to in any statement of case served³ before or during an inquiry⁴ without giving notice of his intention to the persons entitled to appear at the inquiry⁵. During an inquiry or after its close, he may inspect any such premises in the company of the Secretary of State or, as appropriate, the Welsh Ministers⁶ and the library authority; and he must make such an inspection if so requested by the Secretary of State, the Welsh Ministers or the library authority before or during an inquiry⁷.

In all cases where the appointed person intends to make an accompanied inspection he must announce during the inquiry the date and time at which he proposes to make it⁸. He is not, however, bound to defer such an inspection where any prescribed person⁹ is not present at the time appointed¹⁰.

1 As to the meaning of 'appointed person' see PARA 916 note 5.

2 As to the meaning of 'library authority' see PARA 926.

3 Ie under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 5: see PARA 917. As to the meaning of 'statement of case' see PARA 917 note 8.

4 As to the meaning of 'inquiry' see PARA 916 note 5.

5 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 12(1). As to the persons entitled to appear see PARA 920. As to the meaning of 'person' see PARA 803 note 16.

6 The functions of the Secretary of State under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

7 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 12(2).

8 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 12(3).

9 Ie any person mentioned in the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 12(2): see the text to notes 6-7.

10 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 12(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/B. ADMINISTRATION/(B) Public Inquiries/924. Procedure after inquiry.

924. Procedure after inquiry.

After the close of an inquiry¹, the appointed person² must make a report in writing³ to the Secretary of State or, as the case may be, the Welsh Ministers⁴ which must include his conclusions and his recommendations or his reasons for not making any recommendations⁵.

If, after the close of an inquiry, the Secretary of State or the Welsh Ministers differ from the appointed person on any matter of fact mentioned in, or appearing to him or them to be material to, a conclusion reached by the appointed person, or take into consideration any new evidence or new matter of fact (not being a matter of government policy⁶), he or they must not come to a decision without first notifying the persons entitled to appear at the inquiry⁷ who appeared at it of the difference and the reasons for it or the new evidence or matter of fact and affording to them an opportunity of making written representations within 21 days⁸ of the date of the notification⁹. Where the Secretary of State or the Welsh Ministers have so taken into consideration any new evidence or new matter of fact and are for that reason disposed to disagree with a recommendation made by the appointed person, he or they must give the persons entitled to appear at the inquiry who appeared at it the opportunity of asking, within 21 days of the notification to them of the new evidence or matter of fact, for the reopening of the inquiry¹⁰.

The Secretary of State or the Welsh Ministers may, as he or they think fit, cause an inquiry to be reopened to afford an opportunity for persons, including the Secretary of State or, as appropriate, the Welsh Ministers, to be heard on such matters relating to the subject-matter of the inquiry as he or they may specify, and he or they must do so if asked¹¹ by the library authority¹².

1 As to the meaning of 'inquiry' see PARA 916 note 5.

2 As to the meaning of 'appointed person' see PARA 916 note 5.

3 As to the meaning of 'writing' see PARA 805 note 14.

4 The functions of the Secretary of State under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

5 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 13(1).

6 In relation to Wales, any reference in the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, to government policy has effect as if it included a reference to policy adopted or formulated by the Welsh Ministers: see National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 6(1), (2), Sch 4; Government of Wales Act 2006 Sch 11 para 30.

7 As to the persons entitled to appear see PARA 920. As to the meaning of 'person' see PARA 803 note 16.

8 As to the power to extend time limits under the rules see PARA 916 note 5.

9 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 13(2).

10 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 13(3).

11 le pursuant to the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 13(3) and in the circumstances and within the period mentioned in r 13(3): see the text to note 10.

12 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 13(4). As to the meaning of 'library authority' see PARA 926. Where an inquiry is reopened the Secretary of State or the Welsh Ministers must send to the persons entitled to appear at the inquiry who appeared at it a written statement of the specified matters (r 13(4)(a)) and r 8(2)-(6) (see PARA 919) applies as if references to an inquiry were references to a reopened inquiry (r 13(4)(b)).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/B. ADMINISTRATION/(B) Public Inquiries/925. Notification of decision.

925. Notification of decision.

The Secretary of State or, as the case may be, the Welsh Ministers¹ must notify his or their decision and the reasons for it in writing² to all persons entitled to appear at the inquiry³ who did appear at it and to any other person who, having appeared at the inquiry, has asked to be notified of the decision⁴. Where a copy of the appointed person's report⁵ is not sent with the notification of the decision, the notification must be accompanied by a copy of his conclusions and of any recommendations made by him; and if a person entitled to be notified of the decision has not received a copy of that report, he must be supplied with a copy of it on written application made to the Secretary of State or, as appropriate, the Welsh Ministers within four weeks of the decision⁶.

1 The functions of the Secretary of State under the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 As to the meaning of 'writing' see PARA 805 note 14.

3 As to the persons entitled to appear see PARA 920. As to the meaning of 'person' see PARA 803 note 16. As to the meaning of 'inquiry' see PARA 916 note 5.

4 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 14(1).

5 For these purposes, 'report' does not include any documents appended to the appointed person's report, but any person who has received a copy of the report may apply to the Secretary of State or, as appropriate, the Welsh Ministers in writing within six weeks of the date of receipt of the report for an opportunity of inspecting any such documents and the Secretary of State or the Welsh Ministers must afford him that opportunity: Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 14(3). As to the appointed person's report see PARA 924. As to the meaning of 'appointed person' see PARA 916 note 5. As to the power to extend time limits under the rules see PARA 916 note 5.

6 Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627, r 14(2).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/C. LIBRARY AUTHORITIES/926. Meanings of 'local authority' and 'library authority'.

C. LIBRARY AUTHORITIES

926. Meanings of 'local authority' and 'library authority'.

The local authorities for the purposes of the Public Libraries and Museums Act 1964 in England¹ are county councils, London borough councils, district councils, the Common Council of the City of London and the Council of the Isles of Scilly². Subject to the provisions relating to joint boards³, 'library authority' means in England one of the following authorities: (1) the council of a non-metropolitan county⁴; (2) the council of a London borough and the Common Council; and (3) the council of a metropolitan district⁵.

The local authorities in Wales⁶ for the purposes of the Act are county councils and county borough councils⁷; and, subject to the provisions relating to joint boards⁸, library authorities in Wales are county councils and county borough councils⁹.

1 As to the meaning of 'England' see PARA 804 note 2.

2 Local Government Act 1972 s 206 (amended by the Local Government Act 1985 s 102(2), Sch 17). As to local government areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 23 et seq. As to the application of the Public Libraries and Museums Act 1964 to the Isles of Scilly see PARA 913.

3 Ie the Public Libraries and Museums Act 1964 s 5: see PARA 927.

4 'Non-metropolitan county' means any county other than a metropolitan county: Local Government Act 1972 s 270(2).

5 Public Libraries and Museums Act 1964 s 25; Local Government Act 1972 s 206 (as amended: see note 2).

6 As to the meaning of 'Wales' see PARA 802 note 4.

7 Public Libraries and Museums Act 1964 s 25 (definition added by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 24(3)).

8 Ie the Public Libraries and Museums Act 1964 s 5: see PARA 927.

9 Public Libraries and Museums Act 1964 s 4(3) (added by the Local Government (Wales) Act 1994 Sch 16 para 24(2)).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/C. LIBRARY AUTHORITIES/927. Library areas and joint boards.

927. Library areas and joint boards.

The functions of a library authority¹ as such are exercisable within an area (called a 'library area') consisting of the administrative area of the authority or, in the case of a joint board², consisting of the areas which, if the authorities constituting the board were library authorities, would form their library areas; and may also be exercised elsewhere than within its library area if the authority thinks fit³.

With the agreement of two or more library authorities, the Secretary of State or, in relation to Wales, the Welsh Ministers⁴ may by order provide for the formation of a joint board consisting of those authorities which, from the date on which it begins to exercise its functions, is a library authority in lieu of those authorities⁵. The order may⁶ provide for the incorporation of the joint board, for its procedure (including quorum) and for the manner in which its expenses are to be defrayed⁷. On the date on which a joint board begins to exercise its functions:

- 207 (1) the library officers⁸ of the authorities constituting the board are, by the operation of this provision, transferred to and become officers of the board⁹; and
- 208 (2) the library assets and liabilities¹⁰ of those authorities are, save as may be provided by the order setting up the board, transferred to the board¹¹.

On the application of an authority comprised in a joint board, the Secretary of State or, as the case may be, the Welsh Ministers may by order provide for the dissolution of the board, and on its dissolution the authorities constituting the board again become library authorities¹². On the dissolution of a joint board, each library officer of the board: (a) where at the board's formation he was a library officer of one of the authorities which on the dissolution of the board again become library authorities, is transferred to and again becomes an officer of that authority¹³; and (b) in any other case, is transferred to and becomes an officer of such one of the authorities which on the dissolution of the board again become library authorities as may be agreed between those authorities or, in default of agreement, determined by the Secretary of State or, as appropriate, the Welsh Ministers¹⁴. The library assets and liabilities of the board are divided among the authorities as provided by the order dissolving the board¹⁵.

Where a joint board is dissolved, and:

- 209 (i) at any time before its dissolution a gratuity by way of periodical payments or an annuity was granted to any person by the board on his ceasing to be employed by the board¹⁶, or to the widow or any other dependant of a person who died while in the board's employment, or who died during the currency of such a gratuity so granted to him¹⁷; and
- 210 (ii) if the board had not been dissolved at that time, one or more payments in respect of that gratuity would under the terms of the grant have fallen to be made by the board after that time, whether it would have been obliged to make those payments or not,

those payments must be made by such one of the authorities which on the dissolution of the board again become library authorities as the Secretary of State or, as appropriate, the Welsh Ministers may determine¹⁸. Without prejudice to these provisions, where for the purposes of any pensions provision¹⁹ the board, if it had not been dissolved, would at any time after the date on

which it is dissolved have been the employing authority or former employing authority in relation to a person who before that time died while in the board's employment or otherwise ceased to be employed by it, or in relation to the widow or any other dependant of such a person, such one of the authorities which on the dissolution of the board again become library authorities as the Secretary of State or the Welsh Ministers may determine must be treated as being at that time the employing authority or former employing authority for those purposes in relation to that person, or to that person's widow or other dependant, as the case may be²⁰.

- 1 As to the meaning of 'library authority' see PARA 926.
- 2 As to joint boards see the Public Libraries and Museums Act 1964 s 5; and see the text to notes 4-15.
- 3 Public Libraries and Museums Act 1964 s 4(2) (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 24(1)(a), Sch 18).
- 4 The functions of the Secretary of State under the Public Libraries and Museums Act 1964 in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.
- 5 Public Libraries and Museums Act 1964 s 5(1) (amended by SI 1992/1311). Such orders not being made by statutory instrument are not recorded in this work.
- 6 Ie without prejudice to the Local Government Act 1972 s 241: Public Libraries and Museums Act 1964 s 5(1); Interpretation Act 1978 s 17(2)(a). The Local Government Act 1972 s 241 applies to the formation under the Public Libraries and Museums Act 1964 s 5 of a joint board comprising the Common Council of the City of London as if the Common Council were a local authority within the meaning of the Local Government Act 1972 (see s 270(1); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 22): Public Libraries and Museums Act 1964 s 5(1); Interpretation Act 1978 s 17(2)(a). Where any enactment, whether passed before or after 1 April 1974, authorises the formation by a provisional or other order of a joint board or joint committee, the constituent members of which are local authorities, for the discharge of any of the functions of those authorities, the provisional order or order may apply to the joint board or joint committee, subject to any necessary modifications, any of the provisions of the Local government Act 1972: s 241. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 51-55.
- 7 Public Libraries and Museums Act 1964 s 5(1).
- 8 'Library officer' means an officer of a local authority employed by the authority solely or mainly for the purposes of any functions exercisable by it in relation to the public library service; and 'officer' includes a servant: Public Libraries and Museums Act 1964 s 25. As to the meaning of 'local authority' see PARA 926.
- 9 Public Libraries and Museums Act 1964 s 5(2)(a). As to the transfer of library officers see further PARA 928.
- 10 'Library assets and liabilities' means property held by a local authority solely or mainly for the purposes of any functions exercisable by it in relation to the public library service and rights and liabilities to which the authority is entitled or subject by reason of the exercise of such functions: Public Libraries and Museums Act 1964 s 25.
- 11 Public Libraries and Museums Act 1964 s 5(2)(b).
- 12 Public Libraries and Museums Act 1964 s 5(3) (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 24(1)(b), Sch 18; SI 1992/1311). Such orders not being made by statutory instrument are not recorded in this work.
- 13 Public Libraries and Museums Act 1964 s 5(4)(a)(i).
- 14 Public Libraries and Museums Act 1964 s 5(4)(a)(ii).
- 15 Public Libraries and Museums Act 1964 s 5(4)(b). Where any library assets and liabilities have been transferred by the operation of the Public Libraries and Museums Act 1964 from one local authority to another, those authorities may by agreement provide for the making of such adjustments in relation to their respective property, rights and liabilities as appear to them to be desirable having regard to the transfer, and any such agreements may in particular provide for the making of payments by either party: see s 11(3). Where it appears to the Secretary of State or, as the case may be, the Welsh Ministers that, having regard to any such transfer, it

is desirable that any such adjustment, including any payment by either of the authorities concerned, should be made, then, subject to any agreement made by the authorities concerned and after consultation with them, the Secretary of State or, as the case may be, the Welsh Ministers may, by directions, make provision for that adjustment: see s 11(4) (s 11(4), (5) amended by SI 1992/1311). Where any question arises as to whether any library assets and liabilities have been so transferred from one local authority to another, the question must be determined by the Secretary of State or, as appropriate, the Welsh Ministers: see the Public Libraries and Museums Act 1964 s 11(5) (as so amended).

- 16 Public Libraries and Museums Act 1964 Sch 1 para 4(1)(a).
- 17 Public Libraries and Museums Act 1964 Sch 1 para 4(1)(b).
- 18 Public Libraries and Museums Act 1964 Sch 1 para 4(1) (amended by SI 1992/1311).
- 19 For these purposes, 'pensions provision' means a provision relating to pensions contained in or made under a general or local Act: Public Libraries and Museums Act 1964 Sch 1 para 5.
- 20 Public Libraries and Museums Act 1964 Sch 1 para 4(2) (amended by SI 1992/1311).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/C. LIBRARY AUTHORITIES/928. Officers of library authorities.

928. Officers of library authorities.

A person is not disqualified by reason of his being a teacher in, or being otherwise employed in, any school or other educational institution maintained or assisted by a local education authority, for being a member of any committee of any local authority appointed for purposes connected with the execution of the Public Libraries and Museums Act 1964, or for being a representative of a local authority on a joint committee of the authority and another authority which has been appointed or established for any such purpose¹.

A library authority² to which a library officer³ is transferred by the operation of any provision of the Public Libraries and Museums Act 1964 must secure that:

- 211 (1) so long as he continues in the authority's employment by virtue of the transfer, and until he is served with a written⁴ statement of new terms and conditions of employment, he enjoys terms and conditions of employment not less favourable than those he enjoyed immediately before the date of transfer⁵; and
- 212 (2) the new terms and conditions are such that so long as he is engaged in duties reasonably comparable to those in which he was engaged immediately before the date of transfer, the scale of his salary or remuneration and the other terms and conditions of his employment are not less favourable than those he enjoyed immediately before the date of transfer⁶.

These provisions operate separately from and without prejudice to provisions in employment legislation for the protection of employment rights on the transfer of an undertaking⁷.

Where any library officers have been transferred by the operation of the Public Libraries and Museums Act 1964 from one local authority⁸ to another, those authorities may by agreement provide for the making of such adjustments in relation to their respective rights and liabilities as appear to them to be desirable having regard to the transfer, and any such agreements may in particular provide for the making of payments by either party⁹. Where it appears to the Secretary of State or, in relation to Wales, the Welsh Ministers¹⁰ that, having regard to any such transfer, it is desirable that any such adjustment, including any payment by either of the authorities concerned, should be made, then, subject to any agreement made by the authorities concerned and after consultation with them, the Secretary of State or, as the case may be, the Welsh Ministers may, by directions, make provision for that adjustment¹¹. Where any question arises as to whether any library officers have been transferred from one authority to another, the question must be determined by the Secretary of State or, as appropriate, the Welsh Ministers¹².

1 See the Local Government Act 1972 s 104(2) (amended by the Education Reform Act 1988 s 237(2), Sch 13 Pt II); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 372.

2 As to the meaning of 'library authority' see PARA 926.

3 As to the meaning of 'library officer' see PARA 927 note 8.

4 As to the meaning of 'written' see PARA 805 note 14.

5 Public Libraries and Museums Act 1964 s 11(1)(a).

6 Public Libraries and Museums Act 1964 s 11(1)(b). The Local Government Act 1972 s 255 (which requires provision to be made by regulations for the payment in certain cases of compensation for loss of employment or loss or diminution of emoluments: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 7) applies as respects persons who suffer loss of employment or loss or diminution of emoluments in consequence of their transfer by the operation of any provision of the Public Libraries and Museums Act 1964 as it applies in the cases there provided: s 11(2) (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 24(1)(e), Sch 18); Interpretation Act 1978 s 17(2)(a).

7 As to transfers of undertakings see **EMPLOYMENT** vol 39 (2009) PARA 111 et seq.

8 As to the meaning of 'local authority' see PARA 926.

9 See the Public Libraries and Museums Act 1964 s 11(3).

10 The functions of the Secretary of State under the Public Libraries and Museums Act 1964 in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

11 See the Public Libraries and Museums Act 1964 s 11(4) (s 11(4), (5) amended by SI 1992/1311).

12 See the Public Libraries and Museums Act 1964 s 11(5) (as amended: see note 11).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/D. FUNCTIONS AND DUTIES OF LIBRARY AUTHORITIES/929. In general.

D. FUNCTIONS AND DUTIES OF LIBRARY AUTHORITIES

929. In general.

It is the duty of every library authority¹ to provide a comprehensive and efficient library service for all persons² desiring to make use of it³. However, although a library authority has power to make facilities for the borrowing of books and other materials available to any person, it is not under a duty to make them available to persons other than those whose residence or place of work is within the authority's library area⁴ or who are undergoing full-time education within that area⁵.

In fulfilling its duty, a library authority must in particular have regard to the desirability of:

- 213 (1) securing, by the keeping of adequate stocks, by arrangements with other library authorities, and by any other appropriate means, that facilities are available for the borrowing of, or reference to, books and other printed matter, and pictures, gramophone records, films and other materials, sufficient in number, range and quality to meet the general requirements and any special requirements of both adults and children⁶; and
- 214 (2) encouraging both adults and children to make full use of the library service, and providing advice as to its use and of making available such bibliographical and other information as may be required by persons using it⁷; and
- 215 (3) in relation to any matter concerning the functions of both the library authority as such and any other authority whose functions are exercisable within the library area, securing that there is full co-operation between the persons engaged in carrying out those functions⁸.

The duty to provide a comprehensive and efficient library service is qualified by a requirement that performance of the duty should not interfere with the due administration of justice; dissemination through a library authority service of material the subject of an interlocutory injunction against publication would be an interference with the due administration of justice⁹. A decision as to the library stock taken on purely political grounds is a decision for an ulterior motive taking into account an irrelevant consideration and is therefore susceptible to judicial review¹⁰.

Library authorities also have duties in relation to the public lending right scheme¹¹.

1 As to the meaning of 'library authority' see PARA 926.

2 As to the meaning of 'person' see PARA 803 note 16.

3 Public Libraries and Museums Act 1964 s 7(1) (amended by the Local Government Act 1972 s 272(1), Sch 30).

4 As to the meaning of 'library area' see PARA 927.

5 Public Libraries and Museums Act 1964 s 7(1) proviso.

6 Public Libraries and Museums Act 1964 s 7(2)(a).

7 Public Libraries and Museums Act 1964 s 7(2)(b).

8 Public Libraries and Museums Act 1964 s 7(2)(c).

9 *A-G v Observer Ltd, Re application by Derbyshire County Council* [1988] 1 All ER 385. However the omission to examine publications to ascertain whether they contained extracts from the book the subject of the interlocutory injunction in question did not constitute an interference with the administration of justice: see *A-G v Observer Ltd, Re application by Derbyshire County Council* at 399.

10 See *R v Ealing London Borough Council, ex p Times Newspapers Ltd, R v Hammersmith and Fulham London Borough Council, ex p Times Newspapers Ltd, R v Camden London Borough Council, ex p Times Newspapers Ltd* (1986) 85 LGR 316, [1987] IRLR 129, DC (library authorities decided, in support of print unions in an industrial dispute with management of publishers, to ban from public libraries newspapers and other publications which had previously been stocked; authorities held to have acted in a way amounting to an abuse of power for the reasons set out in the text).

11 As to the public lending right scheme see PARA 897.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/D. FUNCTIONS AND DUTIES OF LIBRARY AUTHORITIES/930. Restriction on charges for library facilities.

930. Restriction on charges for library facilities.

Except as set out below, no charge may be made by a library authority¹ (otherwise than to another library authority) for library facilities made available by the authority².

The Secretary of State or, in relation to Wales, the Welsh Ministers³ may by regulations⁴ authorise library authorities to make charges for such library facilities made available by them as may be specified in the regulations⁵, and make such provision as regards charges by library authorities for library facilities, other than provision requiring the making of charges, as the Secretary of State or Welsh Ministers think fit⁶. Without prejudice to the generality of this power, the power to make regulations includes power:

- 216 (1) to confer a discretion as to the amount of any charge made under the regulations⁷;
- 217 (2) to provide for such a discretion to be exercisable subject to such maximum amount or scale of maximum amounts as may be specified in or determined under the regulations⁸;
- 218 (3) to require library authorities to take steps as may be specified or described in the regulations for making the amounts of their charges for library facilities known to the public⁹;
- 219 (4) to make such other incidental provision and such supplemental, consequential and transitional provision as the Secretary of State or the Welsh Ministers think necessary or expedient¹⁰; and
- 220 (5) to make different provision for different cases, including different provision in relation to different persons¹¹, circumstances or localities¹².

Nothing in any such regulations may, however, authorise any charges to be made by a library authority for lending any written material¹³ to any person where:

- 221 (a) it is the duty of the authority¹⁴ to make borrowing facilities available to that person¹⁵;
- 222 (b) the material is lent in the course of providing such facilities to that person on any library premises¹⁶;
- 223 (c) the material is lent in a form which is readable without the use of any electronic or other apparatus¹⁷; and
- 224 (d) that person is not a person who has required any such apparatus to be used, or made available to him, for putting the material into such a form in order that he may borrow it¹⁸;

but heads (a) to (d) above do not prevent any such regulations from authorising the making of charges in respect of the use of any facility for the reservation of written materials or in respect of borrowed materials which are returned late or in a damaged condition¹⁹.

Nothing in the regulations may authorise any charges to be made by a library authority for making facilities available to any person to do any of the following on any library premises, that is to say:

- 225 (i) reading the whole or any part of the written materials for the time being held by the authority in a form in which they are readable without the use of any electronic or other apparatus or in microform²⁰;
- 226 (ii) consulting, whether or not with the assistance of any such apparatus or of any person, such catalogues, indexes or similar articles as are maintained in any form whatever exclusively for the purposes of that authority's public library service²¹.

1 As to the meaning of 'library authority' see PARA 926.

2 Public Libraries and Museums Act 1964 s 8(1).

3 The functions of the Secretary of State under the Public Libraries and Museums Act 1964 in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 The power to make such regulations is exercisable by statutory instrument; and, in the case of regulations made by the Secretary of State, no such regulations may be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament: Public Libraries and Museums Act 1964 s 8(5A) (added by the Local Government and Housing Act 1989 s 154(1)). As to the equivalent procedure in relation to subordinate legislation made by the Welsh Ministers see the Government of Wales Act 2006 Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941. As to the regulations made see the Library Charges (England and Wales) Regulations 1991, SI 1991/2712; and PARA 931.

5 Public Libraries and Museums Act 1964 s 8(2)(a) (s 8(2)-(5) substituted by the Local Government and Housing Act 1989 s 154(1); Public Libraries and Museums Act 1964 s 8(2), (5) subsequently amended by SI 1992/1311).

6 Public Libraries and Museums Act 1964 s 8(2)(b) (as substituted and amended: see note 5).

7 Public Libraries and Museums Act 1964 s 8(5)(a) (as substituted: see note 5).

8 Public Libraries and Museums Act 1964 s 8(5)(b) (as substituted: see note 5).

9 Public Libraries and Museums Act 1964 s 8(5)(c) (as substituted: see note 5).

10 Public Libraries and Museums Act 1964 s 8(5)(d) (as substituted and amended: see note 5).

11 As to the meaning of 'person' see PARA 803 note 16.

12 Public Libraries and Museums Act 1964 s 8(5)(e) (as substituted: see note 5).

13 'Written material' means: (1) any book, journal, pamphlet or other similar article; or (2) any reprographic copy within the meaning of the Copyright, Designs and Patents Act 1988 of any such article or any other reproduction of such an article made by any means whatever: Public Libraries and Museums Act 1964 s 8(7) (added by the Local Government and Housing Act 1989 s 154(2)). 'Reprographic process' means a process for making facsimile copies or involving the use of an appliance for making multiple copies, and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a film or sound recording: Copyright, Designs and Patents Act 1988 s 178. The Copyright, Designs and Patents Act 1988 contains provisions permitting, in relation to prescribed libraries and archives, certain acts without infringing copyright: see ss 37-44A; and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 353 et seq.

14 Ie under the Public Libraries and Museums Act 1964 s 7(1): see PARA 929.

15 Public Libraries and Museums Act 1964 s 8(3)(a) (as substituted: see note 5).

16 Public Libraries and Museums Act 1964 s 8(3)(b) (as substituted: see note 5). 'Library premises' means: (1) any premises which are occupied by a library authority where library facilities are made available by the authority, in the course of its provision of a public library service, to members of the public; (2) any vehicle which is used by a library authority for the purpose of providing such a service and is a vehicle in which facilities are so made available: s 8(7) (as added: see note 13).

- 17 Public Libraries and Museums Act 1964 s 8(3)(c) (as substituted: see note 5).
- 18 Public Libraries and Museums Act 1964 s 8(3)(d) (as substituted: see note 5).
- 19 Public Libraries and Museums Act 1964 s 8(3) (as substituted: see note 5).
- 20 Public Libraries and Museums Act 1964 s 8(4)(a) (as substituted: see note 5).
- 21 Public Libraries and Museums Act 1964 s 8(4)(b) (as substituted: see note 5).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/D. FUNCTIONS AND DUTIES OF LIBRARY AUTHORITIES/931. Charges which may be made.

931. Charges which may be made.

A library authority¹ whose library area² is in England or in Wales³ (a 'relevant authority') may make charges for the library facilities made available by it as follows⁴:

- 227 (1) for lending library material or library apparatus⁵;
- 228 (2) for reserving for any person⁶ library material or library apparatus, whether that material or apparatus is for the time being held by the relevant authority or needs to be obtained from elsewhere and whether for the purpose of lending the material or apparatus to that person or making it available for his use on library premises⁷, and for notifying that person that that material or apparatus has become available or is not available for borrowing or use by him⁸;
- 229 (3) in respect of borrowed library material or library apparatus which is returned late⁹;
- 230 (4) for making library apparatus available for use on library premises¹⁰;
- 231 (5) in respect of library apparatus, library material and any other equipment or thing used in providing the library service which is lost, damaged or destroyed by, or whilst on loan to, the person paying the charge¹¹;
- 232 (6) for assisting or instructing a person how to use a computer¹²;
- 233 (7) for researching and for collating information for and at the request of a person¹³;
- 234 (8) for supplying catalogues, indexes or similar articles where the articles become the property of the person to whom they are supplied¹⁴;
- 235 (9) for supplying library material which has been researched, collated, produced or copied¹⁵ by the relevant authority where the material becomes the property of the person to whom it is supplied¹⁶;
- 236 (10) for supplying copies of library material obtained from another library not maintained by the relevant authority or from a holder of records¹⁷ where the copies become the property of the person to whom they are supplied¹⁸;
- 237 (11) for providing, or procuring the provision of, library material to a person who does not wish to collect it or have it collected and for notifying a person who has requested provision other than by collection that the library material is not available¹⁹;
- 238 (12) for providing a room or cubicle on library premises for the purpose of working or studying to which only the person paying the charge is for the time being permitted access²⁰;
- 239 (13) for making library facilities available other than on library premises, except that the relevant authority may not charge the individual users of facilities where the facilities are made available at a school, old people's home, hospital, prison, club or like institution, and the person who has arranged with the relevant authority for the facilities to be made available at that institution is charged²¹;
- 240 (14) for making available to any person library facilities which go beyond those ordinarily provided by the relevant authority as part of the library service²².

Notwithstanding heads (1) and (14) above, no charge may be made for lending any written material²³ to any person where it is the authority's duty²⁴ to make facilities for borrowing available to that person and the statutory conditions²⁵ are fulfilled²⁶. Notwithstanding heads (4),

(6) and (14) above, no charge may be made for making facilities available, or in respect of time spent by employees of the relevant authority in making facilities available, for any person, on library premises: (a) to read the whole or any part of any of the written materials for the time being held by the authority in a form in which they are readable without the use of any electronic or other apparatus, or in microform²⁷; or (b) to consult such catalogues, indexes or similar articles as are maintained, in any form whatever, exclusively for the purposes of that authority's public library service²⁸.

The amount and the incidence of any charge made in accordance with the above provisions is at the discretion of the relevant authority²⁹ which may (i) make different provision for different cases, including different provision in relation to different persons, circumstances and localities³⁰; and (ii) make charges in respect of each use of the library facilities made available by it, or charge an annual subscription or a deposit in respect of all or some of those facilities³¹.

A relevant authority which makes a charge in accordance with these provisions must display, in a conspicuous place within each library premises occupied by the relevant authority, a notice which is easily readable specifying the library facilities made available by the authority for which it makes a charge and, in the case of each such facility, the amount of the charge or the basis on which the charge will be calculated³².

A local authority³³ maintaining premises under the Public Libraries and Museums Act 1964 may use the premises, or allow them to be used, whether in return for payment or not, for holding meetings and exhibitions, showing films and slides, giving musical performances and holding other events of an educational or cultural nature, and, notwithstanding anything in the statutory restriction on making charges³⁴, may make or authorise the making of a charge for admission in connection with those events³⁵.

- 1 As to the meaning of 'library authority' see PARA 926.
- 2 As to the meaning of 'library area' see PARA 927.
- 3 As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4.
- 4 See the Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(1).
- 5 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(a). This provision is expressed to be subject to reg 3(3): see the text to notes 23-26. 'Library material' means: (1) words, figures, images, sounds or data recorded in or on any medium; (2) toys; and (3) educational artefacts: reg 2(1). 'Library apparatus' means electronic or other apparatus intended for use with library material: reg 2(1).
- 6 As to the meaning of 'person' see PARA 803 note 16.
- 7 As to the meaning of 'library premises' see PARA 930 note 16.
- 8 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(b).
- 9 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(c).
- 10 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(d). This provision is expressed to be subject to reg 3(4): see the text to notes 27-28.
- 11 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(e).
- 12 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(f). This provision is expressed to be subject to reg 3(4): see the text to notes 27-28. 'Computer' means any device for storing and processing information: reg 2(1).
- 13 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(g).
- 14 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(h).

15 Any reference in the Library Charges (England and Wales) Regulations 1991, SI 1991/2712, to 'copying' and 'copies' must be construed in accordance with the Copyright, Designs and Patents Act 1988 s 17 (see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 314): Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 2(2).

16 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(i).

17 'Records' means materials in written or other form setting out facts or events or otherwise recording information: see the Local Government (Records) Act 1962 s 8(1) (definition applied by the Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 2(1)). As to the meaning of 'written' see PARA 805 note 14.

18 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(j).

19 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(k).

20 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(l).

21 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(m).

22 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(2)(n). This provision is expressed to be subject to reg 3(3), (4): see the text to notes 23-28.

23 As to the meaning of 'written material' see PARA 930 note 13.

24 Ie under the Public Libraries and Museums Act 1964 s 7(1): see PARA 929.

25 Those conditions are that: (1) the material is lent in the course of providing such facilities to that person on any library premises (Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(3)(b)); (2) it is lent in a form in which it is readable without the use of any electronic or other apparatus (reg 3(3)(c)); and (3) that person is not a person who has required any such apparatus to be used, or made available to him, for putting the material into such a form in order that he may borrow it (reg 3(3)(d)).

26 See the Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(3)(a).

27 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(4)(a).

28 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 3(4)(b).

29 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 4(1).

30 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 4(2)(a).

31 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 4(2)(b).

32 Library Charges (England and Wales) Regulations 1991, SI 1991/2712, reg 5.

33 As to the meaning of 'local authority' see PARA 926.

34 Ie anything in the Public Libraries and Museums Act 1964 s 8: see PARA 930.

35 Public Libraries and Museums Act 1964 s 20.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/D. FUNCTIONS AND DUTIES OF LIBRARY AUTHORITIES/932. Libraries in inner London.

932. Libraries in inner London.

A London library authority¹ may lend or permit the use of any articles² provided by it in a library³ in the same way as if the articles were provided in or for the purposes of a lending library⁴.

Any person borrowing an article from a library is not entitled to retain it after the expiration of such period, not being in the case of a book less than 14 days, after the date of its being borrowed as may be prescribed in relation to that article by the authority by whom the library is maintained⁵. Without prejudice to any other powers with respect to articles borrowed from a library, the authority by whom the library is maintained may recover from any person failing to return an article borrowed from the library within such period as may be so prescribed such reasonable sum as it may prescribe in respect of each day or each week or part of a week during which he fails to return the article, with any expenses incurred in sending to him notices in respect of the article⁶. Any such sum recoverable by two or more authorities may be recovered by any one of them⁷.

Where an authority becomes entitled under these provisions to recover any sum from any person, that person does not have any right until that sum has been duly paid to borrow any other article from any library maintained by that authority, including any library maintained by it in combination with another authority or part of the cost of the maintenance of which is borne by the authority⁸.

Nothing in these provisions is to be construed as authorising an infringement of copyright⁹.

1 'Library authority' means the council of an inner London borough: London County Council (General Powers) Act 1955 s 37(1) (amended by SI 1965/540; and applied by the London County Council (General Powers) Act 1958 s 36(4)). See also note 3. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 35 et seq.

2 'Article' includes a book or gramophone record (London County Council (General Powers) Act 1955 s 37(1) (as applied: see note 1)) or other article provided in a library (London County Council (General Powers) Act 1958 s 36(3))). The articles which a library authority may provide in a library and may repair include statuary, sculpture, models and other articles of a similar nature: s 36(1)(d).

3 'Library' means any library maintained under the Public Libraries and Museums Act 1964 by a library authority (either alone or in combination with another authority) and any library maintained thereunder any part of the cost of the maintenance of which is borne by a library authority; and in relation to a library maintained by two or more authorities in combination or the cost of the maintenance of which is shared by two or more authorities, references to the authority by whom the library is maintained must be construed as references to those authorities: London County Council (General Powers) Act 1955 s 37(1) (as amended and applied: see note 1).

4 London County Council (General Powers) Act 1958 s 36(2).

5 London County Council (General Powers) Act 1955 s 37(2).

6 London County Council (General Powers) Act 1955 s 37(3).

7 London County Council (General Powers) Act 1955 s 37(4).

8 London County Council (General Powers) Act 1955 s 37(5).

9 London County Council (General Powers) Act 1958 s 36(5) (substituted by the Copyright, Designs and Patents Act 1988 s 303(1), Sch 7 para 7).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/D. FUNCTIONS AND DUTIES OF LIBRARY AUTHORITIES/933. Manorial documents.

933. Manorial documents.

Where any manorial documents¹ are transferred to any local authority, public library, museum or historical or antiquarian society in pursuance of a direction given by the Master of the Rolls², the local authority or the governing body of the public library, museum or historical or antiquarian society must cause to be furnished to the secretary of the Royal Commission on Historical Manuscripts an inventory of the documents in the prescribed form³; and must not, without the consent of the Master of the Rolls, permit any such documents to pass out of its custody⁴. The controlling authority of any such record repository⁵ must cause all manorial documents to be kept and used under conditions suitable for their safe and proper preservation and must comply with any directions from time to time given by the Master of the Rolls⁶ in that behalf⁷. Whenever requested by the lord of the manor⁸ or the Master of the Rolls, the controlling authority of a record repository must produce manorial documents to him or in accordance with his directions⁹.

Where the lord of the manor intends to remove manorial documents from any such record repository as is referred to above, he must, at least three months¹⁰ before their removal, give to the secretary of the Royal Commission on Historical Manuscripts written¹¹ notice of his intention, containing particulars of the documents and stating the place to which he intends to remove them¹². No manorial documents may be removed outside England and Wales without the consent of the Master of the Rolls¹³.

The controlling authority of a record repository must on payment of the prescribed fees permit manorial documents to be inspected at all reasonable times by any person interested in land enfranchised by or under the Copyhold Act 1894, or the Law of Property Act 1922, and must permit the taking of copies of such documents; and must also, with the consent of the lord of the manor, permit the inspection of manorial documents, and the taking of copies thereof, for the purpose of historical research¹⁴.

1 As to the meaning of 'manorial documents' see PARA 813 note 6.

2 Ie under the Law of Property Act 1922 s 144A(4) or under that provision as applied by the Local Government (Records) Act 1962 s 7(1): Manorial Documents Rules 1959, SI 1959/1399, r 7 (amended by SI 1963/976). The Master of the Rolls may appoint a judge of the Senior Courts to discharge this function: see the Courts and Legal Services Act 1990 s 73(1), (2), (5)(a), (b) (s 73(1), (2) amended by the Constitutional Reform Act 2005 s 59(5), Sch 11, Pt 2, para 4(1), (3)). In practice, the functions of the Master of the Rolls in relation to manorial documents are carried out by the Royal Commission on Historical Manuscripts: see PARA 813.

3 For the prescribed form see the Manorial Documents Rules 1959, SI 1959/1399, Schedule (amended by SI 1963/976).

4 See the Manorial Documents Rules 1959, SI 1959/1399 r 7 (amended by SI 1963/976). As to the preservation of manorial documents see further **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 699 et seq.

5 'Record repository' means the Public Record Office, any local authority, public library, museum, or historical or antiquarian society to which manorial documents are transferred in pursuance of such a direction as is mentioned in note 2 and any repository approved by the Master of the Rolls as a place of deposit for manorial documents under the Manorial Documents Rules 1959, SI 1959/1399 r 5 (see PARA 813): r 1(1) (definition amended by SI 1963/976). As to the Public Record Office see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 838.

6 Or by a judge of the Senior Courts: see note 2.

- 7 Manorial Documents Rules 1959, SI 1959/1399, r 8.
- 8 As to the meaning of 'lord of the manor' see PARA 813 note 6.
- 9 Manorial Documents Rules 1959, SI 1959/1399 r 9.
- 10 As to the meaning of 'month' see PARA 803 note 11.
- 11 As to the meaning of 'written' see PARA 805 note 14.
- 12 Manorial Documents Rules 1959, SI 1959/1399 r 5A (added by SI 1967/963).
- 13 Manorial Documents Rules 1959, SI 1959/1399, r 11.
- 14 Manorial Documents Rules 1959, SI 1959/1399 r 10. As to the enfranchisement of copyholds see **REAL PROPERTY** vol 39(2) (Reissue) PARA 31 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/D. FUNCTIONS AND DUTIES OF LIBRARY AUTHORITIES/934. Byelaws.

934. Byelaws.

A local authority¹ may make byelaws, to be confirmed by the Secretary of State or, in relation to Wales, the Welsh Ministers², regulating the use of facilities provided by it under the Public Libraries and Museums Act 1964 and the conduct of persons in premises where those facilities are provided³. Without prejudice to the statutory provision under which byelaws are allowed to include provisions for imposing fines⁴, byelaws may include provisions for enabling officers⁵ of the local authority to exclude or remove from premises maintained by it under the Act any person who contravenes the byelaws⁶.

As well as complying with the statutory provisions requiring byelaws, when confirmed, to be made available to the public⁷, a local authority must cause a copy of byelaws made by it and in force to be displayed in any premises maintained by it under the Public Libraries and Museums Act 1964 to which the public have access⁸.

1 As to the meaning of 'local authority' see PARA 926.

2 The functions of the Secretary of State under the Public Libraries and Museums Act 1964 in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 Public Libraries and Museums Act 1964 s 19(1) (amended by SI 1992/1311). Byelaws in force immediately before 1 April 1965 (ie the commencement date for the Public Libraries and Museums Act 1964: see s 26(7)) under the Museums and Gymnasiums Act 1891 s 7 (repealed) or the Public Libraries Act 1901 s 3 (repealed) were not invalidated by the repeal of those Acts but have effect as if they had been made, and confirmed by the Secretary of State or the Welsh Ministers, under the Public Libraries and Museums Act 1964 s 19: s 26(5).

4 Ie the Local Government Act 1972 s 237: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 571.

5 As to the meaning of 'officer' see PARA 927 note 8.

6 Public Libraries and Museums Act 1964 s 19(2); Interpretation Act 1978 s 17(2)(a).

7 Ie the Local Government Act 1972 s 236(8): see **LOCAL GOVERNMENT** vol 69 (2009) PARA 557.

8 Public Libraries and Museums Act 1964 s 19(3); Interpretation Act 1978 s 17(2)(a).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(9) LIBRARIES/(v) The Local Authority Library Service/E. FINANCE AND EXPENSES/935. In general.

E. FINANCE AND EXPENSES

935. In general.

A library authority¹ may make contributions towards the expenses of another library authority or of any other person² providing library facilities for members of the public³. The Secretary of State or, in relation to Wales, the Welsh Ministers⁴ may make grants to any body which maintains book catalogues or indexes to which all library authorities are permitted to refer, or otherwise makes available to all library authorities facilities likely to assist them in the discharge of their duty⁵ to provide a comprehensive and efficient library service⁶.

The British Library Board may contribute to the expenses of library authorities or of any other person providing library facilities, whether for members of the public or otherwise⁷. The Registrar of the Public Lending Right must, by means of payments out of the central fund, reimburse local library authorities for expenditure incurred in giving effect to the public lending right scheme⁸. A library which is maintained by a library authority is one of the institutions falling within the government indemnity scheme for objects on loan⁹.

Subject to the above provisions and those relating to charges for library authority services¹⁰ and to grants or loans from the National Heritage Memorial Fund¹¹, the funding of local authority library services is determined by the general provisions as to local government finance¹².

1 As to the meaning of 'library authority' see PARA 926.

2 As to the meaning of 'person' see PARA 803 note 16.

3 Public Libraries and Museums Act 1964 s 9(1).

4 The functions of the Secretary of State under the Public Libraries and Museums Act 1964 in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

5 Ie under the Public Libraries and Museums Act 1964 s 7(1): see PARA 929.

6 Public Libraries and Museums Act 1964 s 9(2) (amended by SI 1992/1311). As to local authorities' powers to incur expenditure on contributions to the funds of any body which provides any public service in the United Kingdom otherwise than for the purposes of gain see the Local Government Act 1972 s 137(3)(b); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 519.

7 See the British Library Act 1972 s 1(3)(b); and PARA 906.

8 See the Public Lending Right Act 1979 s 3(6); and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS**.

9 See the National Heritage Act 1980 s 16; and PARA 1090.

10 See PARAS 930-931.

11 See PARA 816.

12 As to local government finance see generally **LOCAL GOVERNMENT** vol 29(1) (2001 Reissue) PARA 514 et seq,

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(i) Introduction/936. Formation.

(10) LITERARY AND SCIENTIFIC INSTITUTIONS

(i) Introduction

936. Formation.

Many of the learned societies in England and Wales are incorporated by royal charter¹. The oldest of these, the Royal Society of London, was thus incorporated by Charles II in 1662². Others have taken advantage of the provisions of the Companies Acts³. However, the majority of the literary and scientific institutions are not incorporated. Under the Friendly Societies Act 1992, incorporated friendly societies may include among their purposes the carrying on of social or benevolent activity, including fund-raising and other activities carried out for a charitable purpose⁴. A society established for the promotion of literature, science and the fine arts and registered as a friendly society under the Friendly Societies Act 1974 retains this status so long as the registration occurred prior to 1 February 1993⁵.

1 As to incorporation by royal charter see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1128.

2 As to the Royal Society of London, now known as the Royal Society, see the society's website at www.royalsociety.org.

3 See the Companies Act 2006 ss 60-62; and **COMPANIES** vol 14 (2009) PARA 201. As to power conferred upon the Charity Commission to incorporate the trustees of any charity for religious, educational, literary, scientific or public charitable purposes see the Charities Act 1993 s 50; and **CHARITIES** vol 8 (2010) PARA 260.

4 See the Friendly Societies Act 1992 s 10(1), (2); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2097.

5 See the Friendly Societies Act 1992 s 93(1), (2); the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2083.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(i) Introduction/937. Technical and industrial institutions.

937. Technical and industrial institutions.

The Technical and Industrial Institutions Act 1892 facilitates the acquisition of land by any institution established¹ for effecting all or any of the following purposes:

- 241 (1) giving technical instruction;
- 242 (2) providing the training, mental or physical, necessary for it;
- 243 (3) in connection with those purposes, providing workshops, tools, scientific apparatus and plant of all kinds, libraries, reading rooms, halls for lectures, exhibitions and meetings, gymnasiums and swimming baths, general facilities for mental and physical training, recreation and amusement, and all necessary and proper accommodation for persons frequenting the institution².

The governing body of the institution may be any body corporate, council, public authority, local authority, commissioners, directors, committee, trustees or other body of persons, corporate or unincorporate, willing to undertake, or elected or appointed for the purpose of undertaking, or having, the government and management of the institution³. The governing body may:

- 244 (a) make byelaws and rules for the management and conduct of the institution⁴;
- 245 (b) acquire land by agreement⁵ whether by way of conveyance on sale, exchange or gift⁶;
- 246 (c) sell or exchange any land so acquired for other land⁷;
- 247 (d) invest money arising by the sale of land until its reinvestment in the purchase of land⁸.

Every institution for which land has been acquired under an exercise of these powers must be open generally either to all persons or to all persons within specified limits as to age, qualification or otherwise, and either without payment or on specified terms as to times of attendance and payment of subscriptions or fees or otherwise, without preference being given to any person or class of persons within the specified limits⁹.

These provisions are unaffected by the miscellaneous and financial powers of local authorities¹⁰ under the Local Government Act 1972¹¹.

1 See whether before or after 27 June 1892: Technical and Industrial Institutions Act 1892 s 2.

2 See the Technical and Industrial Institutions Act 1892 s 2.

3 Technical and Industrial Institutions Act 1892 s 3(1).

4 Technical and Industrial Institutions Act 1892 s 3(2).

5 See the Technical and Industrial Institutions Act 1892 ss 4, 5.

6 See the Technical and Industrial Institutions Act 1892 ss 6, 7.

7 See the Technical and Industrial Institutions Act 1892 s 9(1)-(3) (s 9(1) amended by the Charities Act 2006 s 75(1), Sch 8, para 8). Land so purchased or taken in exchange must be devoted to the same purposes and is

liable to the same incidents as originally were applicable to or affected the land sold or given in exchange: Technical and Industrial Institutions Act 1892 s 9(4).

8 See the Technical and Industrial Institutions Act 1892 s 9(5), (6) (s 9(5) substituted, (6) added, by the Trustee Act 2000 s 40(1), Sch 2 Pt II para 4).

9 Technical and Industrial Institutions Act 1892 s 8.

10 Ie the provisions of the Local Government Act 1972 Pts VII, VIII (ss 111-178).

11 See the Local Government Act 1972 s 131(1)(b), (2)(a); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 509. 'Local authority' for these purposes includes a parish meeting and the parish trustees of a parish: s 131(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(i) Introduction/938. Ascertainment of purposes of an institution.

938. Ascertainment of purposes of an institution.

Where an institution has a written constitution or charter, this is generally the best evidence of the purposes for which it was instituted¹. In considering whether the purposes for which an institution was originally instituted were or were not exclusively scientific, no assistance can be obtained by a consideration of byelaws made after the grant of its charter². However, if it has no written constitution or charter or its written constitution or charter is not clear as to its purposes, regard may be had to the purposes which it has in fact pursued³. In the case of literary and scientific institutions it is important to determine the purposes for which a particular institution was instituted in order to ascertain whether it is a body governed by the Literary and Scientific Institutions Act 1854⁴, and whether it may be entitled to enjoy any privileges and exemptions⁵.

1 *Battersea Metropolitan Borough Council v British Iron and Steel Research Association* [1949] 1 KB 434 at 451, 453, CA, per Jenkins J and at 460 per Bucknill LJ; *British Launderers' Research Association v Hendon Borough Rating Authority* [1949] 1 KB 434 at 470, [1949] 1 All ER 21 at 25, CA, per Denning LJ; *Institution of Mechanical Engineers v Cane (Valuation Officer)* [1961] AC 696, [1960] 3 All ER 715, HL; see also *Institute of Fuel v Morley (Valuation Officer)* [1956] AC 245, [1955] 3 All ER 843, HL; *Berry v St Marylebone Borough Council* [1958] Ch 406 at 414, [1957] 3 All ER 677 at 680, CA. If a society's written constitution or charter specifies several objects, evidence of its activities may be relevant to show what its main objects are, but not to construe or limit the construction of the language of the society's constitution: *Berry v St Marylebone Borough Council* at 417 and at 682, explaining *Chartered Insurance Institute v London Corp* [1957] 2 All ER 638 at 642, 643, [1957] 1 WLR 867 at 875, 876, DC, per Devlin J.

2 *Institute of Fuel v Morley (Valuation officer)* [1956] AC 245 at 252, [1955] 3 All ER 843 at 846, HL, per Lord Morton of Henryton.

3 *British Launderers' Research Association v Hendon Borough Rating Authority* [1949] 1 KB 434 at 470, 471, [1949] 1 All ER 21 at 25, CA, per Denning LJ.

4 See PARA 939.

5 As to tax exemptions and other privileges and exemptions see PARAS 978, 1107-1109.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/A. SCOPE OF THE ACT; GOVERNMENT OF THE INSTITUTIONS/939. Literary and Scientific Institutions Act 1854.

(ii) Institutions within the Literary and Scientific Institutions Act 1854

A. SCOPE OF THE ACT; GOVERNMENT OF THE INSTITUTIONS

939. Literary and Scientific Institutions Act 1854.

The Literary and Scientific Institutions Act 1854 applies to all institutions, whether incorporated or not, for the time being¹ established for the promotion of science², literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries³ or reading rooms for general use among the members or open to the public, of public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs⁴. The Act is not confined to institutions of a public or charitable nature, but extends also to private institutions established for its purposes⁵. However, the Act does not apply to the Royal Institution⁶; nor does it authorise the establishment of institutions for recreation or enjoyment⁷ as distinguished from instruction⁸.

1 Existing at 11 August 1854 (the date of the passing of the Literary and Scientific Institutions Act 1854) or in the future: see *Re Russell Institution, Figgins v Baghino* [1898] 2 Ch 72.

2 'Science' is not confined to pure or speculative science, or science generally, but includes various branches of science: see *IRC v Forrest* (1890) 15 App Cas 334 at 353, HL, per Lord Macnaghten (decided under the Customs and Inland Revenue Act 1885 s 11(3) (repealed)); see also *Battersea Metropolitan Borough v British Iron and Steel Research Association* [1949] 1 KB 434 at 451, CA, per Jenkins J; *British Launderers' Research Association v Hendon Borough Rating Authority* [1949] 1 KB 434 at 468, [1949] 1 All ER 21 at 23, CA, per Denning LJ; *Central Council for Health Education v Hope (Valuation Officer)* (1958) 51 R & IT 634, Lands Tribunal (it is uncertain whether the promotion of healthy living is an art or a science).

3 As to libraries see the Public Libraries and Museums Act 1964; and PARA 914 et seq.

4 Literary and Scientific Institutions Act 1854 s 33.

5 *Re Russell Institution, Figgins v Baghino* [1898] 2 Ch 72.

6 Literary and Scientific Institutions Act 1854 s 33 proviso (amended by the Statute Law (Repeals) Act 1973). As to the Royal Institution of Great Britain see the institution's website at www.rigb.org.

7 Eg the playing of cards, billiards etc: *Re Badger, Mansell v Viscount Cobham* [1905] 1 Ch 568.

8 *Re Badger, Mansell v Viscount Cobham* [1905] 1 Ch 568.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/A. SCOPE OF THE ACT; GOVERNMENT OF THE INSTITUTIONS/940. Governing body.

940. Governing body.

The governing body of any institution to which the Literary and Scientific Institutions Act 1854 applies¹ is the council, directors, committee or other body to whom, by Act of Parliament, charter or the rules and regulations of the institution, the management of its affairs is entrusted². If on the establishment of the institution no such body was constituted, the members³ may, upon due notice, create a governing body to act for the institution⁴.

- 1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939.
- 2 Literary and Scientific Institutions Act 1854 s 32.
- 3 As to the members see PARA 942.
- 4 See the Literary and Scientific Institutions Act 1854 s 32.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/A. SCOPE OF THE ACT; GOVERNMENT OF THE INSTITUTIONS/941. Byelaws.

941. Byelaws.

In any institution to which the Literary and Scientific Institutions Act 1854 applies¹ the governing body², if not otherwise legally empowered to do so, may at any meeting specially convened according to its regulations make byelaws³ to regulate the institution, its members⁴ and officers, and to further its purpose and objects, and may impose a reasonable pecuniary penalty for breach of any such byelaw⁵.

Penalties for the breach of byelaws, when accrued, are recoverable at the option of the governing body in any local court of the district where the defendant resides or the institution is situated, but no pecuniary penalty imposed by any byelaws is recoverable unless the byelaw has been confirmed by the votes of three-fifths of the members present at a meeting specially convened for the purpose⁶.

1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939.

2 As to the governing body see PARA 940.

3 Byelaws made by a society cannot override the provisions of the Literary and Scientific Institutions Act 1854: *Re Bristol Athenaeum* (1889) 43 ChD 236.

4 As to the members see PARA 942.

5 Literary and Scientific Institutions Act 1854 s 24.

6 Literary and Scientific Institutions Act 1854 s 24.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/B. MEMBERSHIP/942. Qualification for membership.

B. MEMBERSHIP

942. Qualification for membership.

A member of an institution to which the Literary and Scientific Institutions Act 1854 applies¹ is a person who has been admitted according to the institution's rules and regulations and has paid a subscription, or has signed the roll or list of members².

No member is entitled to vote or to be counted a member in any proceedings if his current subscription is for the time being in arrear³.

1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939.

2 Literary and Scientific Institutions Act 1854 s 31.

3 Literary and Scientific Institutions Act 1854 s 31. He may be sued if his subscription is in arrear: see PARA 943.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/B. MEMBERSHIP/943. Liabilities of members.

943. Liabilities of members.

A member of an institution to which the Literary and Scientific Institutions Act 1854 applies¹ may be sued by an institution if his subscription is in arrear, or for possessing himself of and detaining any of the institution's property contrary to the rules, or for injuring or destroying any such property². If the action against the member so sued fails, and he is adjudged his costs, he may elect to recover them from the officer in whose name the proceedings were taken or from the institution; and in the second case the member is entitled to have process against the property of the institution³.

A society officer who wrongfully retains society funds may be restrained from collecting money payable to the society and from representing himself to be an officer of the society⁴. A member of an institution who wilfully and maliciously, or wilfully and unlawfully, destroys or injures the institution's property, so that the institution's funds may be exposed to loss, may be prosecuted and, if convicted, punished in the same manner as a non-member⁵.

1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939. As to membership see PARA 942.

2 Literary and Scientific Institutions Act 1854 s 25. As to actions by and against such institutions see PARA 956. As to criminal damage to property see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 333 et seq.

3 Literary and Scientific Institutions Act 1854 s 25.

4 *Shaw v Hill* (1845) 1 Holt Eq 99.

5 Literary and Scientific Institutions Act 1854 s 26 (amended by the Forgery Act 1913 s 20, Schedule; and by the Larceny Act 1916 s 48(1), Schedule). As to theft by a member see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 282-292.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/C. PROPERTY AND FINANCE/(A) In general/944. Personal property.

C. PROPERTY AND FINANCE

(A) IN GENERAL

944. Personal property.

In the case of incorporated institutions to which the Literary and Scientific Institutions Act 1854 applies¹ having no provision applicable to the institution's personal property, and in all cases of unincorporated institutions to which the Act applies, the money, securities for money, goods, chattels and personal effects belonging to the institution, and not vested in trustees, are deemed to be vested for the time being in the institution's governing body².

- 1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939.
- 2 Literary and Scientific Institutions Act 1854 s 20. As to the governing body see PARA 940.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/C. PROPERTY AND FINANCE/(A) In general/945. Power to receive gifts.

945. Power to receive gifts.

A gift of real or personal property to an institution¹, not being a charity, or to the trustees of an institution is valid so long as there is nothing in the terms of the gift or in the rules of the institution to prevent the expenditure of the corpus of the property².

1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939.

2 *Re Prevost, Lloyds Bank Ltd v Barclays Bank Ltd* [1930] 2 Ch 383 (gift to the London Library). See also *Carne v Long* (1860) 2 De GF & J 75; *Re Dutton, ex p Peake* (1878) 4 Ex D 54; *Re Clarke, Clarke v Clarke* [1901] 2 Ch 110.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/C. PROPERTY AND FINANCE/(B) Acquisition of Land/946. Power to acquire land.

(B) ACQUISITION OF LAND

946. Power to acquire land.

Freehold land, not exceeding an acre, with or without buildings, may be assured by way of gift, sale or exchange, in fee simple or for a term of years, by any person in England, Wales or Ireland having the present beneficial interest in the land, as a site for an institution governed by the Literary and Scientific Institutions Act 1854¹.

Any number of sites exceeding in the aggregate one acre in extent may be granted for distinct and separate institutions, so long as the site of each institution does not exceed that extent².

1 See the Literary and Scientific Institutions Act 1854 s 1 (amended by the Statute Law (Repeals) Act 1976; Commons Act 2006 ss 48(2)(c), 53, Sch 6 Pt 3). A grant by a tenant for life of such land will not be valid unless it is made with the written consent of the person (if any, and if legally competent) next entitled in remainder, in fee simple or fee tail: Literary and Scientific Institutions Act 1854 s 1 proviso (amended by the Statute Law (Repeals) Act 1976). As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939. Land forming part of the possessions of the Duchy of Lancaster or the Duchy of Cornwall may be granted to literary and scientific institutions: see the Literary and Scientific Institutions Act 1854 ss 2-4 (amended by the Statute Law Revision Act 1892 and the Statute Law (Repeals) Act 1976). As to the Duchy of Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 318 et seq. As to the Duchy of Lancaster see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 300 et seq.

For the development, improvement or general benefit of the settled land or any part of it, a tenant for life may make a grant in fee simple, or absolutely, or a lease for any term of years absolute, for a nominal price or rent, or for less than the best price paid or rent that can reasonably be obtained, or gratuitously, of any part of the settled land for the site or the extension of any existing site of a literary or scientific institution, not more than one acre being conveyed unless the full consideration is present or reserved in respect of the excess: see the Settled Land Act 1925 s 55(1); and **SETTLEMENTS** vol 42 (Reissue) PARA 864. As to the phasing out of strict settlements see the Trusts of Land and Appointment of Trustees Act 1996 s 2, Sch 1; and **SETTLEMENTS** vol 42 (Reissue) PARA 676.

2 See the Literary and Scientific Institutions Act 1854 s 10.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/C. PROPERTY AND FINANCE/(B) Acquisition of Land/947. Conveyances to trustees.

947. Conveyances to trustees.

Where an institution to which the Literary and Scientific Institutions Act 1854 applies¹ is not a corporation, the grant of any land, under the Act or otherwise, may be made to trustees for the purpose of the institution². The trustees may be individuals or corporate bodies, sole or aggregate³ and there may be any number of them⁴. The provisions of the Charities Act 1993 relating to the transfer of, and evidence of title to, property vested in trustees⁵ apply in relation to any institution to which the Literary and Scientific Institutions Act 1854 applies as they apply in relation to a charity⁶.

Grants, conveyances and assurances of sites under the Literary and Scientific Institutions Act 1854 may be made according to the statutory form, or as near to it as circumstances allow⁷.

1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939.

2 Literary and Scientific Institutions Act 1854 s 11.

3 See the Literary and Scientific Institutions Act 1854 s 11.

4 See the Trustee Act 1925 s 34(3)(a); *Re Cleveland Literary and Philosophical Society's Land, Bolchow v Laughton* [1931] 2 Ch 247.

5 Ie the Charities Act 1993 s 83; see **CHARITIES** vol 8 (2010) PARAS 280-281.

6 Charities Act 1993 s 83(5).

7 See the Literary and Scientific Institutions Act 1854 s 13 (amended by the Statute Law (Repeals) Act 1976).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/C. PROPERTY AND FINANCE/(B) Acquisition of Land/948. Conveyances by particular persons.

948. Conveyances by particular persons.

An equitable owner may not convey land for the purposes of the Literary and Scientific Institutions Act 1854 without the concurrence of the trustee or trustees in whom the legal estate is vested¹.

Any corporation, ecclesiastical or lay, sole or aggregate, and any officers, trustees or commissioners holding land for public, ecclesiastical, parochial, charitable or other purposes or objects may, subject to certain conditions, grant or convey, for the purpose of the Literary and Scientific Institutions Act 1854, sites not exceeding one acre each in extent². The conditions are that (1) no ecclesiastical corporation sole, below the dignity of a bishop, may make such a grant without the written consent of the bishop of the diocese³; (2) a grant of parochial property requires the consent of the Secretary of State or, in relation to Wales, the Welsh Ministers⁴; and (3) a grant of property held on a charitable trust requires the consent of the Charity Commission or compliance with certain provisions⁵ of the Charities Act 1993⁶.

A grant by officers, trustees or commissioners, other than parochial trustees, is valid if a majority or quorum authorised to act, assembled at a meeting duly convened, assent to it and execute the deed of conveyance, although they may not constitute a majority of the actual body⁷.

1 The Literary and Scientific Institutions Act 1854 s 5 (amended by the Statute Law (Repeals) Act 1976 s 1(1)) gave an equitable owner power to convey land without the concurrence of the trustees in whom the legal estate was vested, but the Law of Property Act 1925 s 1(7) provides that such a power operates only in equity. As to whether land is subject to a trust of land see PARAS 951-952.

2 Literary and Scientific Institutions Act 1854 ss 1, 6 (amended by the Local Government Act 1933 s 307(1)(b), Sch 11 Pt IV; Statute Law (Repeals) Act 1976).

3 See the Literary and Scientific Institutions Act 1854 s 6.

4 See the Literary and Scientific Institutions Act 1854 s 6 (amended by the Local Government Act 1929 s 137, Sch 12 Pt VII). The Literary and Scientific Institutions Act 1854 s 6 refers to the Poor Law Board the functions of which are now vested in the Secretary of State: see the Local Government Board Act 1871 s 2 (repealed); the Ministry of Health Act 1919 s 3(1)(a) (repealed); and various orders transferring functions including the Secretary of State for the Environment Order 1970, SI 1970/1681, the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971. The functions of the Secretary of State under the Literary and Scientific Institutions Act 1854 s 6 in so far as they relate to Wales were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

5 Ie with such provisions of the Charities Act 1993 s 36(2)-(8) (see CHARITIES vol 8 (2010) PARA 395) as are applicable.

6 See the Literary and Scientific Institutions Act 1854 s 6 (amended by the Charities Act 2006 s 75(1), Sch 8 para 1). As to the Charity Commission see CHARITIES vol 8 (2010) PARA 538 et seq.

7 See the Literary and Scientific Institutions Act 1854 s 7 (amended by the Local Government Act 1933 Sch 11 Pt IV).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/C. PROPERTY AND FINANCE/(B) Acquisition of Land/949. Land subject to lease or rent.

949. Land subject to lease or rent.

Where a portion only of freehold land subject to a perpetual rent, or of leasehold land, is being conveyed for the purposes of the Literary and Scientific Institutions Act 1854, the rent and any renewal fines are apportionable as between the portion conveyed and the remainder of the land¹. The apportionment may be settled by agreement between (1) the person for the time being entitled to the rent where the land is freehold, or the lessor or other owner subject to the lease of the lands comprised in the lease; (2) the person entitled to the fee subject to the rent, or the lessee or other person entitled to the land under the lease, or any assignment for the residue of the term; and (3) the person to whom the conveyance is being made². An apportionment so made is binding on all underlessees and others, whether parties to the agreement or not³.

Apportionment followed by execution of the conveyance renders the person entitled to the fee or other estate in the land subject to the rent, the lessee, and the persons entitled under him, liable as regards future accruing rents and renewal fines only in respect of the land not included in the conveyance⁴. Similarly, the persons entitled have the same rights and remedies for the recovery of their apportioned rents as they previously had for the entire rents⁵. Except as to the amount of rent and renewal fines, the covenants, conditions and agreements remain in force with respect to the land not included in the conveyance⁶.

1 See the Literary and Scientific Institutions Act 1854 s 8. As to the conversion of perpetually renewable leases see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 541.

2 See the Literary and Scientific Institutions Act 1854 s 8.

3 See the Literary and Scientific Institutions Act 1854 s 8.

4 See the Literary and Scientific Institutions Act 1854 s 9.

5 See the Literary and Scientific Institutions Act 1854 s 9. As to apportionment of rent generally see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 278 et seq.

6 See the Literary and Scientific Institutions Act 1854 s 9.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/C. PROPERTY AND FINANCE/(B) Acquisition of Land/950. Application of purchase money.

950. Application of purchase money.

If the purchase money of land sold by an ecclesiastical corporation sole for the purposes of the Literary and Scientific Institutions Act 1854 does not exceed £20, the person conveying may retain the money for his own benefit, but, if it exceeds £20, the money must be applied for the benefit of the corporation sole as the bishop of the diocese directs, by writing registered in the diocesan registry¹. The purchaser is not concerned with the proper application of the purchase money².

In consequence of the provisions of the real property legislation of 1925 there will normally be some persons who are empowered to convey the legal estate in land and to give a good receipt for purchase money, even where the beneficial owner is under disability³. Thus, although provision is made for the application of purchase money where land is acquired from incapacitated persons⁴, it may only rarely be necessary to have recourse to it.

1 See the Literary and Scientific Institutions Act 1854 s 16. For the powers of sale of ecclesiastical property in general, and as to the application of purchase money, see **ECCLESIASTICAL LAW** vol 14 PARAS 1158-1159.

2 See the Literary and Scientific Institutions Act 1854 s 16.

3 See eg PARA 952. See also the powers conferred by the Settled Land Act 1925 ss 38, 73, s 75(1) (**SETTLEMENTS** vol 42 (Reissue) PARAS 804, 808, 827); the Trusts of Land and Appointment of Trustees Act 1996 s 10(3) (**TRUSTS** vol 48 (2007 Reissue) PARA 1036). As to the management of the property of persons under mental incapacity see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 749 et seq.

4 See the Literary and Scientific Institutions Act 1854 s 17, applying the Lands Clauses Consolidation Act 1845 ss 69-74, 78, which provide for payment into court in certain cases (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 664, 669, 671, 682, 684, 685). The Literary and Scientific Institutions Act 1854 s 17 does not apply to purchases from the Chancellor and Council of the Duchy of Lancaster or the officers of the Duchy of Cornwall: s 17.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/C. PROPERTY AND FINANCE/(C) Powers of Disposition and Borrowing; Reverter/951. Powers under the Trusts of Land and Appointment of Trustees Act 1996.

(C) POWERS OF DISPOSITION AND BORROWING; REVERTER

951. Powers under the Trusts of Land and Appointment of Trustees Act 1996.

Where property consisting of or including land is held on charitable, ecclesiastical or public trusts after the commencement of the Trusts of Land and Appointment of Trustees Act 1996, it is subject to a 'trust of land'¹, and the trustees have in reference to such land all the powers which are conferred on the trustees of such a trust².

1 See the Trusts of Land and Appointment of Trustees Act 1996 ss 1, 2(5); and **SETTLEMENTS** vol 42 (Reissue) PARA 676.

2 See the Trusts of Land and Appointment of Trustees Act 1996 ss 6-13, 17; and **SETTLEMENTS** vol 42 (Reissue) PARA 665.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/C. PROPERTY AND FINANCE/(C) Powers of Disposition and Borrowing; Reverter/952. Power to deal with land.

952. Power to deal with land.

Apart from the powers conferred by the Trusts of Land and Appointment of Trustees Act 1996¹, land or buildings, not previously part of the possessions of the Duchies of Lancaster or Cornwall², held in trust for a literary or scientific institution to which the Literary and Scientific Institutions Act 1854 applies³ may, if a sale or exchange is deemed advisable, be sold by trustees having the legal estate, by the direction or with the consent of the governing body⁴, if any, or exchanged for other land or buildings suitable to the purposes of the trust⁵. Money received to equalise an exchange or arising from a sale is applicable in the purchase of another site or in the improvement of other premises to be used for the purposes of the trust⁶. Similarly, trustees may let portions of the premises belonging to the institution, not required for its purposes, and apply the rents for the benefit of the institution⁷.

1 See PARAS 951, 953.

2 As to the Duchy of Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 318 et seq. As to the Duchy of Lancaster see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 300 et seq.

3 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939.

4 As to the governing body see PARA 940.

5 See the Literary and Scientific Institutions Act 1854 s 18.

6 See the Literary and Scientific Institutions Act 1854 s 18.

7 See the Literary and Scientific Institutions Act 1854 s 18. The letting may be for such term and under such covenants or agreements as the governing body deems expedient: s 18.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/C. PROPERTY AND FINANCE/(C) Powers of Disposition and Borrowing; Reverter/953. Power to borrow.

953. Power to borrow.

A literary and scientific institution¹, unlike a commercial or trading undertaking², has no implied powers to borrow money for the purposes of its business; nor does the power of sale given to such institutions³ include a power to borrow⁴; but under the Trusts of Land and Appointment of Trustees Act 1996 the trustees of land held on charitable, ecclesiastical or public trusts have all the powers of an absolute owner, including the power to borrow⁵.

Moreover, in order to indemnify themselves against the payment of any rate, tax, charge, costs or expenses, to which as trustees and legal owners of the building or premises they have become liable⁶, the trustees of such an institution may hold the building or other property vested in them as security for their repayment or mortgage or sell the property, or a part of it, free from the trusts of the institution, and apply the proceeds to their reimbursement, and any balance to the institution's benefit⁷. This power enables trustees to borrow in order to pay for necessary repairs to the institution's premises, but not for enlarging and improving them, at any rate where the improvement consists in providing such things as a billiard room⁸.

1 As to such institutions see PARA 939.

2 See **COMPANIES** vol 15 (2009) PARA 1256.

3 As to the power of sale see PARA 952.

4 *Re Badger, Mansell v Viscount Cobham* [1905] 1 Ch 568.

5 See the Trusts of Land and Appointment of Trustees Act 1996 ss 1(1)(b), 2(5), 6(1); and **TRUSTS** vol 48 (2007 Reissue) PARA 1035.

6 It is the duty of the governing body to indemnify the trustees: see the Literary and Scientific Institutions Act 1854 s 19. As to the governing body see PARA 940.

7 See the Literary and Scientific Institutions Act 1854 s 19. The power is subject to the restrictions contained in the Act with regard to land given and land belonging to the Duchy of Lancaster or the Duchy of Cornwall (see s 4; and PARA 954); s 19.

8 *Re Badger, Mansell v Viscount Cobham* [1905] 1 Ch 568.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/C. PROPERTY AND FINANCE/(C) Powers of Disposition and Borrowing; Reverter/954. Cesser of use of site.

954. Cesser of use of site.

If an institution to which the Literary and Scientific Institutions Act 1854 applies¹ is removed to another site, the land previously occupied, unless it originally formed part of the possessions of the Duchies of Lancaster or Cornwall², may be exchanged or sold for the benefit of the institution, and money received for equality of exchange, or on a sale, may be applied towards the erection or establishment of the institution on the new site³.

If land, or any part of land, given for the purposes of the institution otherwise ceases to be used for those purposes, the Literary and Scientific Institutions Act 1854 provided for its immediate reversion to the estate or manor out of which it was carved⁴; but instead of so reverting, the land now continues to be vested in the persons in whom it was vested before it ceased to be so used and is held on trust for the persons to whom it would otherwise have reverted⁵. The beneficiaries under the trust have no right to be consulted before the land is sold and no right to occupy the land, but the proceeds of any sale are held for their benefit⁶.

1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939.

2 There is no exception from the reverter described in the text to note 4 in the case of duchy lands: see the Literary and Scientific Institutions Act 1854 s 4. Section 4 is, however, now subject to the Reverter of Sites Act 1987 s 1: see the text to notes 5-6. For the purposes of the Reverter of Sites Act 1987, 'land' includes any land an interest in which (including any future or contingent interest arising under the Literary and Scientific Institutions Act 1854) belongs to the Crown, the Duchy of Lancaster or the Duchy of Cornwall: see the Reverter of Sites Act 1987 s 7(2)(b). As to the Duchy of Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 318 et seq. As to the Duchy of Lancaster see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 300 et seq.

3 See the Literary and Scientific Institutions Act 1854 s 4.

4 See the Literary and Scientific Institutions Act 1854 s 4.

5 See the Reverter of Sites Act 1987 ss 1(1), (2), 7(1)(b) (s 1(2) amended by the Trusts of Land and Appointment of Trustees Act 1996 s 5(1), Sch 2 para 6(1), (2)). This provision does not change the identity of the person to whom the land reverts, but transfers the rights of reverter from the site to the proceeds of sale: see *Marchant v Onslow* [1995] Ch 1, [1994] 2 All ER 707.

6 See the Reverter of Sites Act 1987 s 1(2) (as amended: see note 5). Section 1 does not confer any new rights on a beneficiary whose claim would have been statute-barred before 17 August 1987: see s 1(4) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 2 para 6(1), (3)). Where there is no identifiable beneficiary, the Charity Commission may make a scheme for the proceeds of sale to be held on charitable trusts: see the Reverter of Sites Act 1987 ss 1(5), 2-4; **CHARITIES** vol 8 (2010) PARAS 70-71 and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1354 (where these provisions are discussed in relation to school sites).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/D. LEGAL PROCEEDINGS/955. Description of property.

D. *LEGAL PROCEEDINGS*

955. Description of property.

In all legal proceedings the money, securities, goods, chattels and effects belonging to incorporated institutions to which the Literary and Scientific Institutions Act 1854 applies¹, and which have no provision for the vesting of their personal property, or belonging to unincorporated institutions, and not vested in trustees, may be described as belonging to the governing body, by its proper title².

1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939.

2 See the Literary and Scientific Institutions Act 1854 s 20. As to the governing body see PARA 940. As to the vesting of personality see PARA 944.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/D. LEGAL PROCEEDINGS/956. Actions by and against institutions.

956. Actions by and against institutions.

Incorporated institutions to which the Literary and Scientific Institutions Act 1854 applies¹ which are not entitled to sue and be sued by any corporate name, and unincorporated institutions, may sue or be sued in the name of the president, chairman, principal, secretary or clerk, as determined by the institution's rules, or, if the rules are silent, in the name of the person appointed for this purpose by the governing body². Any person having a claim or demand against the institution may sue the president or chairman if, on application to the governing body, some other officer or person is not nominated to be the defendant³.

Judgments recovered against the institution's nominees are enforceable against the institution's property and not the property of the nominees⁴.

1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939.

2 See the Literary and Scientific Institutions Act 1854 s 21. As to the governing body see PARA 940. As to an action by an institution against a member see PARA 943.

3 See the Literary and Scientific Institutions Act 1854 s 21.

4 See the Literary and Scientific Institutions Act 1854 s 23 (amended by the Statute Law (Repeals) Act 1986). As to the enforcement of judgments see **CIVIL PROCEDURE** vol 12 (2009) PARA 1223 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/E. AMALGAMATION, TRANSFER AND DISSOLUTION/957. Alteration of purpose and amalgamation.

E. AMALGAMATION, TRANSFER AND DISSOLUTION

957. Alteration of purpose and amalgamation.

Where an institution to which the Literary and Scientific Institutions Act 1854 applies¹ (other than one with a royal charter² or established by or acting under a statute) has been established for some particular purpose, and the governing body³ thinks that an alteration, extension or abridgment of that purpose, or an amalgamation with any other institution, is advisable, the proposed modification or amalgamation may be submitted by the governing body to the members⁴ in a written or printed report and a special meeting may be convened to consider it⁵. However, no proposition may be carried into effect unless the report has been delivered or sent by post to every member ten days before the special meeting, and the proposition has been approved by the votes of three-fifths of the members present at the meeting and has been confirmed in the same way at a second special meeting held one month afterwards⁶.

If not less than two-fifths of the members of an institution consider that a proposition so carried is calculated to injure the institution, then, within three months after the confirmation, they may apply in writing to the Secretary of State⁷ who may, at his discretion, forbid the proposition being carried into effect; but the decision does not prevent the members from reconsidering the same proposition on a future occasion⁸.

1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939.

2 As to incorporation by royal charter see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1128.

3 As to the governing body see PARA 940.

4 As to membership see PARA 942.

5 See the Literary and Scientific Institutions Act 1854 s 27.

6 See the Literary and Scientific Institutions Act 1854 s 27.

7 The Literary and Scientific Institutions Act 1854 s 28 refers to 'the Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations' which fails to be construed as a reference to the Board of Trade (in practice the Secretary of State for Business, Innovation and Skills who is President of the Board): see the Interpretation Act 1889 s 12(8) (repealed); and **COMPETITION** vol 18 (2009) PARA 5.

8 See the Literary and Scientific Institutions Act 1854 s 28.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/E. AMALGAMATION, TRANSFER AND DISSOLUTION/958. Dissolution.

958. Dissolution.

Three-fifths or any larger number of members may determine that an institution to which the Literary and Scientific Institutions Act 1854 applies¹ is to be dissolved, either immediately or at the time then agreed upon². In this event all necessary steps must be taken for the disposal and settlement of the institution's property, its claims and liabilities, according to the rules of the institution, or, if the rules are inapplicable, at the discretion of the governing body³. In the event of a dispute among the governing body or members, the adjustment of the institution's affairs must be referred to the judge of the county court of the district where the principal building of the institution is situated⁴. The judge may make the requisite orders, or, if he finds it necessary, may direct proceedings to be taken in the Chancery Division of the High Court⁵. The court will not order the dissolution of an institution which has not functioned for many years, although it will make an order for the disposition of its assets⁶. As an institution governed by the 1854 Act carries on no business⁷, it probably cannot be wound up by the court as an unregistered company⁸.

1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939. As to the members see PARA 942.

2 See the Literary and Scientific Institutions Act 1854 s 29.

3 See the Literary and Scientific Institutions Act 1854 s 29. As to the governing body see PARA 940.

4 See the Literary and Scientific Institutions Act 1854 s 29. As to county courts see COURTS vol 10 (Reissue) PARA 701 et seq.

5 See the Literary and Scientific Institutions Act 1854 s 29. As to the Chancery Division of the High Court see COURTS vol 10 (Reissue) PARA 603.

6 *Re Harrow Literary Institution* [1953] 1 All ER 838, [1953] 1 WLR 551.

7 See the Literary and Scientific Institutions Act 1854 s 33; and PARA 939.

8 See *Re Bristol Athenaeum* (1889) 43 ChD 236; *Re Jones, Clegg v Ellison* [1898] 2 Ch 83; *Re Russell Institution, Figgins v Baghino* [1898] 2 Ch 72. As to winding up unregistered companies see the Insolvency Act 1986 ss 220-229; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1147 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(10) LITERARY AND SCIENTIFIC INSTITUTIONS/(ii) Institutions within the Literary and Scientific Institutions Act 1854/E. AMALGAMATION, TRANSFER AND DISSOLUTION/959. Application of surplus assets.

959. Application of surplus assets.

Upon the dissolution of an institution to which the Literary and Scientific Institutions Act 1854 applies¹, the property remaining, after all debts and liabilities have been satisfied, is not divisible among the members². It must be given to some kindred institution, chosen by the members of the dissolving institution, or in default by the judge of the county court³, notwithstanding that the rules of the institution contain a provision for the division of the property of the society upon dissolution among the shareholders⁴. This restriction does not apply to an institution founded or established by the contributions of shareholders in the nature of a joint stock company⁵.

1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 939. As to the dissolution of institutions see PARA 958.

2 See the Literary and Scientific Institutions Act 1854 s 30. See also *Re Dutton, ex p Peake* (1878) 4 Ex D 54 at 59. As to the members see PARA 942.

3 See the Literary and Scientific Institutions Act 1854 s 30. As to county court proceedings on dissolution see PARA 958.

4 *Re Bristol Athenaeum* (1889) 43 ChD 236.

5 See the Literary and Scientific Institutions Act 1854 s 30. This provision would include eg a literary and scientific institution founded and established by the issue of transferable shares, entitling their holders to the property of the institution, but bearing no dividend (*Re Russell Institution, Figgins v Baghino* [1898] 2 Ch 72), or an institution having a common property arising out of the subscription of members, such property being held by numerous persons in transferable shares (*Re Jones, Clegg v Ellison* [1898] 2 Ch 83). In both these cases the dictum in *Re Bristol Athenaeum* (1889) 43 ChD 236 at 239 per Kay J that an institution which was not a joint stock company was not within the Literary and Scientific Institutions Act 1854 s 30 was commented on with disapproval. As to the meaning of 'joint stock company' see the Companies Act 2006 s 1041; and COMPANIES vol 14 (2009) PARA 33.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(11) ARTS COUNCILS/960. Introduction.

(11) ARTS COUNCILS

960. Introduction.

On 9 August 1946, the Arts Council of Great Britain was incorporated by royal charter¹. That council was responsible for appointing committees, called the Scottish Arts Council and the Welsh Arts Council, to exercise, or advise the council on the exercise of, its functions in Scotland and Wales². In 1994 all three bodies were replaced with three new bodies corporate, an independent Arts Council of England³, the Scottish Arts Council⁴ and an independent Arts Council of Wales⁵.

The Arts Council of England had power to assume any rights, obligations and interests, including in land, of the former Arts Council of Great Britain⁶.

The Arts Councils are distributing bodies for the purposes of the National Lottery Distribution Fund⁷.

1 Charter of Incorporation of the Arts Council of Great Britain, 7 February 1967, preamble (revoked). As to incorporation by royal charter see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1128. The provisions of the original charter, except in so far as they incorporated the council and conferred upon it perpetual succession, were revoked by the charter of 7 February 1967, but that revocation did not affect the legality or validity of anything lawfully done under the provisions of the original charter.

2 Charter of Incorporation of the Arts Council of Great Britain, 7 February 1967, art 8(1) (revoked).

3 See PARA 961.

4 The Arts Council of Scotland is outside the scope of this work; but see the council's website at www.scottisharts.org.uk.

5 As to the Arts Council of Wales see PARA 962.

6 Charter of Incorporation of the Arts Council of England, 30 March 1994, art 1(3) (revoked). The Arts Council of England owns the freeholds of the National Film Theatre, the Museum of the Moving Image, the Hayward Gallery, the Queen Elizabeth Hall, the Purcell Room, and the Royal Festival Hall, which are leased to the Southbank Centre; and the freehold of the Royal National Theatre, which is leased to and occupied by the Royal National Theatre Board Limited.

7 See the National Lottery etc Act 1993 s 23(1); and **LICENSING AND GAMBLING** vol 68 (2008) PARA 721.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(11) ARTS COUNCILS/961. The Arts Council of England.

961. The Arts Council of England.

The Arts Council of England is a body corporate with perpetual succession and a common seal¹. The council may sue and be sued in all courts and in all manner of actions and suits and has power to enter into contracts, to acquire, hold and dispose of property of any kind, to accept trusts and generally to do all matters and things incidental or appertaining to a body corporate².

The objects of the council are:

- 248 (1) to develop and improve the knowledge, understanding and practice of the arts³;
- 249 (2) to increase accessibility of the arts to the public in England⁴; and
- 250 (3) to advise and co-operate with government departments, local authorities, the Arts Councils for Scotland, Wales⁵, and Northern Ireland (or their successors) and other bodies on any matter related to the objects in heads (1) and (2) above⁶.

The money, property and income of the council must be applied solely towards these objects⁷.

The council consists of a chair and up to 14 other persons appointed by the Secretary of State⁸. The terms of office and periods of appointment of the chair and the appointed members are determined by the Secretary of State⁹. The Secretary of State may appoint any person to be an observer to attend all or any meetings of the council or of any panel or committee established by the council¹⁰. The Council may act notwithstanding a vacancy in its number or any defect in the appointment of any member and, subject to the supplemental charter, may provide for its own procedure in regulations made by it¹¹. The council must establish such regional councils for the regions of England as may be approved by the Secretary of State and must delegate certain functions to those regional councils¹².

Subject to the approval of the Secretary of State, the council may appoint a chief executive of the council¹³, and may appoint other staff¹⁴. The council must keep proper accounts and records and must provide the Secretary of State with such financial and other annual reports in such form and at such times as he may require¹⁵.

1 Charter of Incorporation of the Arts Council of England, 30 March 1994, art 1(1), (2). The 1994 Charter, except in so far as it incorporates the council as a body corporate under the name of 'the Arts Council of England', with the powers and capacities specified in art 1(2) (see the text to note 2) is revoked: Supplemental Charter, 31 May 2002, art 1. The Council must provide for the safe custody of the seal of the council and the method of its use must be prescribed in regulations made by the council: art 13. The council has power, subject to the consent of Her Majesty the Queen, to change its name and to add to, amend or revoke any of the provisions of the Supplemental Charter or the remaining provisions of the 1994 Charter: see Supplemental Charter, 31 May 2002, arts 2, 14. As to bodies corporate see COMPANIES vol 14 (2009) PARA 2; CORPORATIONS vol 9(2) (2006 Reissue) PARA 1101 et seq.

2 Charter of Incorporation of the Arts Council of England, 30 March 1994, art 1(2).

3 Supplemental Charter, 31 May 2002, art 4(1).

4 Supplemental Charter, 31 May 2002, art 4(2).

5 As to the Arts Councils for Scotland see PARA 960. As to the Arts Councils for Wales see PARA 962.

6 Supplemental Charter, 31 May 2002, art 4(3). The council is given various powers in furtherance of these objects: see art 5.

7 See the Supplemental Charter, 31 May 2002, art 6.

8 See the Supplemental Charter, 31 May 2002, art 7(1). 'Secretary of State' means the Secretary of State for Culture, Media and Sport, or such other minister as for the time being is responsible for the arts in England: art 3. As to the Secretary of State generally see PARA 802 note 2.

9 Supplemental Charter, 31 May 2002, art 7(2).

10 Supplemental Charter, 31 May 2002, art 8.

11 Supplemental Charter, 31 May 2002, art 9.

12 See the Supplemental Charter, 31 May 2002, arts 5(1), 11.

13 Supplemental Charter, 31 May 2002, art 10.

14 See the Supplemental Charter, 31 May 2002, art 5(13).

15 See the Supplemental Charter, 31 May 2002, art 12.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(11) ARTS COUNCILS/962. The Arts Council of Wales.

962. The Arts Council of Wales.

The Arts Council of Wales (Cyngor Celfyddydau Cymru) is a body corporate with perpetual succession and a common seal¹. The council may sue and be sued in all courts and in all manner of actions and suits and has power to enter into contracts, to acquire, hold and dispose of property of any kind, to accept trusts and generally to do all matters and things incidental or appertaining to a body corporate². The objects for which the council is established and incorporated are:

- 251 (1) to develop and improve the knowledge, understanding and practice of the arts;
- 252 (2) to increase the accessibility of the arts to the public; and
- 253 (3) to advise and co-operate with government departments, local authorities, the Arts Councils for England³, Scotland and Northern Ireland and other bodies on any matters concerned, whether directly or indirectly, with those objects; and
- 254 (4) to carry out the objects through the medium of both the Welsh and English languages⁴.

The council consists of a chairman and not more than 17 other members, one of whom is the vice-chairman, and all of whom are appointed by the National Assembly for Wales⁵. The council may act notwithstanding a vacancy among the members and the validity of any of its proceedings is not affected by any defect in the appointment of a member⁶.

The council may appoint a person or committees or panels to advise and assist it in the exercise of its functions⁷; and may regulate both its own procedure⁸ and the procedure of any such committee or panel⁹. Any officer of the National Assembly for Wales who is appointed by the National Assembly for Wales to be an observer to the council or to any of its committees or panels is entitled to attend any meeting of the council or of the committee or panel to which they are so appointed¹⁰. The council must, with the approval of the National Assembly for Wales, appoint a chief officer to be its principal executive officer, and it may appoint such other officers and employees as it may determine¹¹.

The council must keep proper accounts and other records, and prepare for each financial year statements of accounts in such form as the National Assembly for Wales, with the approval of the Treasury¹², may direct and must submit those statements of account to the National Assembly for Wales as directed¹³. The Council must also keep proper accounts and records of all monies and property received from all sources other than the National Lottery¹⁴ in such form as the National Assembly for Wales may direct and submit those accounts to be audited by the Auditor General for Wales¹⁵ who must examine, certify and report on such accounts, laying a copy of his report before the National Assembly for Wales¹⁶. The council must as soon as possible after the end of each financial year make report to the National Assembly for Wales on the exercise and performance of its functions during that year¹⁷.

1 Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 1(1), (2). The application of the seal of the council must be authenticated by the signatures of the chairman or of some other members of the council authorised generally or especially by the council for that purpose, and of one of such officers of the council as may be authorised by the council so to act: art 13. The council has power to add to, amend, or revoke any of the provisions of the charter: see art 14. As to bodies corporate see COMPANIES vol 14 (2009) PARA 2; CORPORATIONS vol 9(2) (2006 Reissue) PARA 1101 et seq.

2 Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 1(2). The council also has specific power to assume any rights, obligations and interests, including in land, of the former Arts Council of Great Britain: see art 1(3).

3 As to the Arts Council for England see PARA 961.

4 Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 2. All money and property received by the council, including any money voted by Parliament, must be applied solely towards the promotion of its objects: see art 3.

5 See the Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 4. As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 5(1).

7 See the Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 7.

8 See the Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 6.

9 See the Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 8.

10 See the Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 9.

11 See the Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 10.

12 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

13 See the Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 11(a).

14 As to the National Lottery see **LICENSING AND GAMBLING** vol 68 (2008) PARA 686 et seq.

15 As to the Auditor General for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

16 See the Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 11(b).

17 See the Charter of Incorporation of the Arts Council of Wales, 30 March 1994 (incorporating amendments of 24 November 1999 and 13 October 2004) art 12.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(12) THE CRAFTS COUNCIL AND THE DESIGN COUNCIL/963. The Crafts Council.

(12) THE CRAFTS COUNCIL AND THE DESIGN COUNCIL

963. The Crafts Council.

The Crafts Council is the national organisation promoting contemporary crafts in the United Kingdom¹. The council is funded by the Arts Council of England and also receives grants from the Scottish Arts Council and Arts Council of Wales². Formed in 1971 as the Crafts Advisory Council, it became known as the Crafts Council in 1979 and was incorporated by royal charter in 1982³.

The Crafts Council is a body corporate with perpetual succession and a common seal⁴. It may sue and be sued in all courts and in all manner of actions and suits and has power to enter into contracts, to acquire, hold and dispose of property of any kind, to accept trusts and generally to do all matters and things incidental or appertaining to a body corporate⁵. The object of the council is to advance and encourage the creation of works of fine craftsmanship, and to foster, promote and increase the interest of the public in the work of craftspeople and in the accessibility of those works to the public⁶. The council must have regard to the promotion of the work of craftsmen and to education of the public generally in the understanding and appreciation of fine craftsmanship and for that purpose has various powers in pursuance of the object mentioned above⁷. All monies and property received by the council must be applied solely towards the promotion of the object of the council⁸.

The affairs of the council must be managed and regulated in accordance with the byelaws set out in the charter⁹, and general meetings of the council must be held at such times and places as are prescribed by or in accordance with the byelaws¹⁰. The council may act notwithstanding a vacancy amongst its members and the validity of any proceedings of the council are not affected by any defect in the appointment of a member¹¹.

The council consists of a chairman and a vice-chairman and not more than 23 other persons, all members being appointed by, and under terms to be determined by, the council¹². The council must elect from among its members a finance and general purposes committee which may exercise all the investment and borrowing powers of the council and such other powers as may be delegated to it by the council¹³, and may appoint such other committees to exercise, or advise it on the exercise of, any of its powers as it may determine¹⁴. The council must appoint upon such terms as to remuneration and otherwise as it thinks fit a director who is the principal executive officer of the council¹⁵, and must appoint such other permanent officers on such terms as to remuneration or otherwise as it thinks fit¹⁶.

The council must keep proper accounts and must prepare for each financial year statements of account¹⁷. The accounts of the council must be audited by a qualified auditor and all necessary records and materials must be placed at the disposal of the Comptroller and Auditor-General¹⁸.

1 As to the Crafts Council see the council's website at www.craftscouncil.org.uk.

2 As to the Arts Council of England see PARA 961. As to the Arts Council of Wales see PARA 962.

3 See the Charter of Incorporation of the Crafts Council, 20 July 1982, which was amended in 1993, 2000 and 2003. Reference to the provisions of the charter in this paragraph is to the charter as so amended. The council may, subject to the consent of Her Majesty the Queen, revoke, amend or add to the charter: see art 9. The council may surrender the charter subject to the sanction of Her Majesty and upon such terms as she may consider fit: see art 10.

- 4 See the Charter of Incorporation of the Crafts Council, 20 July 1982, art 1. As to the custody and use of the seal see Schedule, byelaw 20. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 2; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1101 et seq.
- 5 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) art 1.
- 6 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) art 3.
- 7 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) art 4.
- 8 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) art 5.
- 9 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) art 8, Schedule. A general meeting of the council has power to revoke, amend or add to the byelaws: see art 8.
- 10 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) art 6. As to general meetings of the council see Schedule, byelaws 8-14, 16-17.
- 11 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) Schedule, byelaw 15. All acts done by any meeting of the council or any committee are, notwithstanding that it is discovered that there was some unintended defect in the appointment of all or any of the members of the council or such committee or that any notice of any meeting has not been given to or received by any such member by reason of any inadvertence or thing beyond the control of the person giving such notice, as valid as if every such member had been duly appointed or had as the case may be given or received such notice: Schedule, byelaw 18.
- 12 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) Schedule, byelaw 2.
- 13 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) Schedule, byelaw 4.
- 14 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) Schedule, byelaw 5.
- 15 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) Schedule, byelaw 6.
- 16 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) Schedule, byelaw 7.
- 17 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) art 7.
- 18 See the Charter of Incorporation of the Crafts Council, 20 July 1982 (as amended: see note 3) art 7, Schedule, byelaw 19. As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(12) THE CRAFTS COUNCIL AND THE DESIGN COUNCIL/964. The Design Council.

964. The Design Council.

The Design Council's role is to promote the use of design throughout United Kingdom¹ businesses and public services and demonstrate that design can play a vital role in strengthening the economy and improving society². The council operates as a non departmental public body funded by an annual grant from the Department for Business, Innovation and Skills with co-sponsorship from the Department of Culture, Media and Sport³.

The Design Council is governed by a council currently consisting of a chairman and 15 members all of whom are appointed by the Secretary of State for Business, Innovation and Skills and the Secretary of State for Culture, Media and Sport acting jointly⁴. The governing council is responsible for establishing the overall strategic direction of the Design Council and for ensuring that the organisation promotes the efficient and effective use of public funds⁵. The governing council also monitors and reviews how the organisation is performing against its aims and objectives, appoints the chief executive (with the approval of sponsoring departments) and makes certain that high standards of corporate governance, risk and financial management are applied at all times⁶.

1 As to the meaning of 'United Kingdom' see PARA 804 note 2.

2 See the Department for Business, Innovation and Skills website at www.bis.gov.uk.

3 See the Department for Business, Innovation and Skills website at www.bis.gov.uk. As to non-departmental public bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

4 See the Design Council website at www.designcouncil.org.uk.

5 See the Design Council website at www.designcouncil.org.uk.

6 See the Design Council website at www.designcouncil.org.uk.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(13) SPORTS COUNCILS/965. In general.

(13) SPORTS COUNCILS

965. In general.

The Sports Council, the Sports Council for Wales (Cyngor Chwaraeon Cymru) and the Scottish Sports Council were established by royal charter in 1972 with the objects of fostering the knowledge and practice of sport and physical recreation among the public at large¹. The Sports Council was replaced in 1996 by two new bodies corporate established by royal charter, the United Kingdom Sports Council and the English Sports Council, and in February 1997 consequential amendments were made to the charter of incorporation of the Sports Council for Wales².

The United Kingdom Sports Council is now known as UK Sport and works in partnership with the home country sports councils and other agencies to lead sport in the United Kingdom³ to world-class success⁴. UK Sport is governed by a board the members of which are appointed by the Secretary of State for Culture, Media and Sport, and the four chairmen of the home country sports councils automatically sit on UK Sport's board⁵.

The English Sports Council is now known as Sport England and is the government agency responsible for building the foundations of sporting success, by creating a world-leading community sport system of clubs, coaches, facilities and volunteers⁶. Sport England is governed by a main board appointed by the Secretary of State for Culture, Media and Sport⁷.

UK Sport, Sport England and the Sports Councils for Wales are all distributing bodies for the purposes of the National Lottery Distribution Fund⁸. UK Sport and Sport England are public bodies for the purposes of the Local Authorities (Goods and Services) Act 1970⁹.

1 See the Civil Service Year Book 1997 col 781; and the Charter of Incorporation of the Sports Council for Wales, 4 February 1972, preamble.

2 The objects of the Sports Council for Wales now include supporting, encouraging and fostering the knowledge and development of sport and physical recreation and the achievement of excellence therein among the public at large in Wales and the provision of facilities therefor: Charter of Incorporation of the Sports Council for Wales, 4 February 1972 (amended 12 February 1997) art 1A. It must take into account the objects and powers of the United Kingdom Sports Council and the other home country sports councils and consult those bodies and act in accordance with any directions given to it by the Secretary of State in relation to the division of responsibilities for matters relating to sport and physical recreation between the council, the United Kingdom Sports Council and the other home country sports councils: art 3(b).

3 As to the meaning of 'United Kingdom' see PARA 804 note 2.

4 See the UK Sport website at www.uksport.gov.uk.

5 See the UK Sport website at www.uksport.gov.uk.

6 See the Sport England at www.sportengland.org.

7 See the Sport England at www.sportengland.org.

8 See the National Lottery etc Act 1993 s 23(2); and **LICENSING AND GAMBLING** vol 68 (2008) PARA 721.

9 See the Local Authorities (Goods and Services) (Public Bodies) (Sports Councils) Order 1996, SI 1996/3092, art 2; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 495.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(14) THE BRITISH COUNCIL/966. Constitution and powers.

(14) THE BRITISH COUNCIL

966. Constitution and powers.

The British Council was incorporated by royal charter of 7 October 1940¹ under the name of 'the British Council' with perpetual succession and a common seal². The council may sue and be sued in all courts and in all manner of actions and suits and generally has power to do all matters and things incidental or appertaining to a body corporate³. The objects for which the council is established and incorporated are to advance any purpose which is exclusively charitable and which: (1) promotes a wider knowledge of the United Kingdom⁴; (2) develops a wider knowledge of the English language; (3) encourages cultural, scientific, technological and other educational co-operation between the United Kingdom and other countries; or (4) otherwise promotes the advancement of education⁵. The income and property of the council wheresoever derived must be applied solely towards the promotion of the objects of the council⁶.

All the powers of the council are vested in a board consisting of not less than ten and not more than 15 members⁷. The board may delegate any of its powers⁸ to a sub-committee, or sub-committees⁹. Subject to the provisions of the supplemental charter and the byelaws therein, the board has the power to regulate its meetings and the despatch of business thereat as it may from time to time decide¹⁰. An annual general meeting of the council must be held in every calendar year and within 15 months of the previous such meeting for the purpose of receiving a report on the affairs of the council¹¹.

The board may appoint a director general and such other employees on such terms as it thinks fit¹². The accounts of the council must be made up for each financial year ending on the 31 March and must be audited in such a manner as the Treasury may direct¹³.

1 The British Council was incorporated by royal charter in 1940 and a supplemental charter was granted on 26 November 1993. The charter was amended by Orders in Council dated 22 July 1976, 5 October 1983, 4 December 1984, 27 October 1993, and 16 July 2002. References to the charter in this paragraph are to the charter as so amended. As to incorporation by royal charter see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1128.

2 Charter of Incorporation of the British Council, 7 October 1940, art 1. The provisions of the Charter of Incorporation of 1940, except in so far as they incorporate the council and confer upon it perpetual succession and a common seal, were revoked by the supplemental charter of 26 November 1993: see art 1. The board of the council may by special resolution alter, amend or add to any of the provisions of the supplemental charter: see art 11. The board may by special resolution surrender the supplemental charter subject to the sanction of Her Majesty the Queen: see art 16. The board may empower the chairman to appoint persons by name or by office to authorise the affixing of the common seal of the council to any instruments on its behalf and also to attest the same by signing the said instruments; provided that no fewer than two such persons must authorise the affixing of the common seal and sign each such instrument: Schedule, Byelaw 13. As to the corporate seal see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1122 et seq.

3 Supplemental Charter of the British Council, 26 November 1993, art 2. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 2; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1101 et seq.

4 As to the meaning of 'United Kingdom' see PARA 804 note 2.

5 Supplemental Charter of the British Council, 26 November 1993, art 3. For the purposes of these objects the council is given various powers: see arts 4, 5.

6 See the Supplemental Charter of the British Council, 26 November 1993, art 6.

7 See the Supplemental Charter of the British Council, 26 November 1993, art 8, Schedule Byelaws 2-10. In execution of their powers under the charter, no board member is liable for any loss to the property of the council arising by reason of any improper investment made in good faith (so long as where appropriate advice has been sought before making such investment) or for the negligence or fraud of any other board member or by reason of any mistake or omission made in good faith by any board member or by reason of any other matter or thing whatsoever except wilful and individual fraud, wrong-doing or wrongful omission on the part of the board member: art 9.

8 Ie other than its powers under the Supplemental Charter of the British Council of 26 November 1993 art 11 or 12: see note 2, see the text to note 10.

9 See the Supplemental Charter of the British Council, 26 November 1993, art 13.

10 Supplemental Charter of the British Council, 26 November 1993, Schedule, Byelaw 11.

11 See the Supplemental Charter of the British Council of 26 November 1993 Schedule, Byelaws 16, 18. All other general meetings of the council are extraordinary general meetings: see Schedule, Byelaws 16, 17.

12 Supplemental Charter of the British Council, 26 November 1993, Schedule, Byelaw 15. The appointment of the director general must be previously approved by the Secretary of State for Foreign and Commonwealth Affairs and he holds office for such period as the said Secretary of State may approve: Schedule, Byelaw 15.

13 Supplemental Charter of the British Council, 26 November 1993, art 15. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(15) RESEARCH COUNCILS/967. Establishment of research councils.

(15) RESEARCH COUNCILS

967. Establishment of research councils.

The following bodies established or to be established by royal charter are research councils¹: (1) the Medical Research Council²; (2) the Engineering and Physical Sciences Research Council³; (3) the Natural Environment Research Council⁴; (4) any other body which is established for purposes connected with scientific research⁵ and consists of persons appointed by a Minister of the Crown and which is declared by Order in Council to be established as a research council for purposes of the Science and Technology Act 1965⁶. In the exercise of these powers the following research councils have been established: (a) the Economic and Social Research Council⁷; (b) the Biotechnology and Biological Sciences Research Council⁸; (c) the Science and Technology Facilities Council⁹; (d) the Technology Strategy Board¹⁰.

Where any activities of a research council or government department in relation to scientific research are to be taken over from it by any research council or government department¹¹, then on the transfer accordingly of responsibility for those activities the Secretary of State¹² may by order made by statutory instrument transfer or provide for transferring property, rights, liabilities or obligations held, acquired or incurred in connection with the carrying on of the activities previously by any research council or government department; and a research council must comply with any directions of the Secretary of State requiring it to take over from, or transfer to, any research council or government department the responsibility for any activities in relation to scientific research¹³. On any such transfer of responsibility the Secretary of State may¹⁴ amend or repeal any provision in any enactment affecting a research council or government department concerned, so far as it appears to him necessary or expedient for giving full effect to the transfer¹⁵.

1 Nothing in the Science and Technology Act 1965 prejudices or affects any power to amend or revoke the charters of any research council, or any power of Her Majesty to grant new charters or affect the operation of any amendment made or charter granted after 23 March 1965 (ie the date of the passing of the Act): s 6(2). As to incorporation by royal charter see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1128.

2 Science and Technology Act 1965 s 1(1)(a) (amended by the Statute Law (Repeals) Act 1998). As to the Medical Research Council see PARA 969.

3 See the Science and Technology Act 1965 s 1(1)(b). Section 1(1)(b) refers to the Science Research Council which was subsequently renamed the Engineering and Physical Sciences Research Council: see the Engineering and Physical Sciences Research Council Order 1994, SI 1994/424; Research Councils (Transfer of Property etc) Order 1994, SI 1994/611; and PARA 973.

4 See the Science and Technology Act 1965 s 1(1)(b). As to the Natural Environment Research Council see PARA 970.

5 'Scientific research' means research and development in any of the sciences (including the social sciences) or in technology: Science and Technology Act 1965 s 6(1).

6 Science and Technology Act 1965 s 1(1)(c). No recommendation may be made to Her Majesty to make an Order in Council declaring a body to be a research council under s 1(1)(c) unless a draft of the order, specifying the objects or principal objects of that body, has been laid before Parliament and approved by a resolution of each House of Parliament: s 1(4). As to Orders in Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 907. As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

7 See the Social Science Research Council Order 1965, SI 1965/2015; and PARA 971.

8 See the Biotechnology and Biological Sciences Research Council Order 1994, SI 1994/423; and PARA 972.

9 See the Science and Technology Facilities Council Order 2007, SI 2007/279; and PARA 974.

10 See the Technology Strategy Board Order 2007, SI 2007/280; and PARA 975.

11 Ie other than under the Science and Technology Act 1965 s 3: see the text to notes 13-15.

12 As to the Secretary of State see PARA 802 note 2.

13 Science and Technology Act 1965 s 3(6) (s 3(6), Sch 3 amended by SI 1995/2985). The Science and Technology Act 1965 3(6), (7) (see the text to notes 14-15) has effect in relation to any activities carried on or to be carried on by the United Kingdom Atomic Energy Authority as if it were a government department: s 4(3). As to the United Kingdom Atomic Energy Authority see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1363 et seq.

In exercise of this power the following orders have been made: (1) the Building Research Station (Transfer of Property etc) Order 1967, SI 1967/998 (which transferred certain property, rights, liabilities and obligations from the then Minister of Technology to the then Minister of Public Buildings and Works); (2) the Research Councils (Transfer of Property etc) Order 1994, SI 1994/611 (see note 3); (3) the Research Councils (Transfer of Property etc) Order 1995, SI 1995/630; (4) the Research Councils (Transfer of Property etc) Order 2007, SI 2007/770 (see PARA 974); (5) the Technology Strategy Board (Transfer of Property etc) Order 2007, SI 2007/1676 (see PARA 975).

Under the Science and Technology Act 1965 s 3, the activities of the Council for Scientific and Industrial Research were to be taken over by such of the research councils as are concerned with the matters in question or by other government departments, and the Council for, and Department, of Scientific and Industrial Research were dissolved: see s 3(1). The former activities of the National Institute for Research in Nuclear Science were to be taken over by the then Science Research Council (see s 3(2)); and the Natural Environment Research Council was to carry on the former work of the National Oceanographic Council (see s 3(3) (substituted by the Nature Conservancy Council Act 1973 s 1(3), Sch 2 para 2)). For transitional provisions in relation to those transfers see the Science and Technology Act 1965 s 3(1)-(3), Sch 3 (as so amended).

14 Ie by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: see the Science and Technology Act 1965 s 3(7). As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

15 Science and Technology Act 1965 s 3(7) (amended by SI 1995/2985). In connection with the amendment or repeal, the Secretary of State may make transitional, supplemental or incidental provision: s 3(7) (as so amended).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(15) RESEARCH COUNCILS/968. Expenses and accounts.

968. Expenses and accounts.

The Secretary of State¹ may pay out of money provided by Parliament to any research council² such sums in respect of its expenses as he may with Treasury³ consent determine; and so far as relates to the use and expenditure of sums so paid the research council must act in accordance with such directions as may from time to time be given to it by the Secretary of State⁴.

Each research council must furnish the Secretary of State with such returns, accounts and other information with respect to its property and activities as he may from time to time require, and must prepare programmes and estimates of expenditure in such form and at such times as he may require⁵. As soon as possible after the end of each financial year⁶, each research council must make to the Secretary of State a report on the exercise and performance of its functions during that year⁷; and the Secretary of State must lay a copy of the report before each House of Parliament, together with such comments as he may think fit to make⁸.

Each research council must keep proper accounts and other records, and must prepare for each financial year statements of account in such form as the Secretary of State, with Treasury approval, may direct and submit them to the Secretary of State at such time as he may direct⁹. On or before 30 November in any year, the Secretary of State must transmit to the Comptroller and Auditor General the statements of account of each research council for the financial year last ended¹⁰. The Comptroller and Auditor General must then examine and certify them and lay copies of them together with his report on them before each House of Parliament¹¹.

The obligations of the Medical Research Council¹² under these provisions in relation to the Secretary of State are in place of any corresponding obligations imposed on it by its charter or otherwise¹³. Subject to this, anything which under its charter is to be done by or to a committee of the Privy Council must be done instead by or to the Secretary of State¹⁴.

Land occupied in the United Kingdom¹⁵ by any research council is deemed, for the purposes of any rate on property, to be property occupied by or on behalf of the Crown for public purposes¹⁶.

Nothing in the Science and Technology Act 1965 or in any of the enactments¹⁷ relating to the general functions of any research council may be taken as restricting the activities of a research council to the United Kingdom, or any part of it, nor may the expenses to be paid by the Secretary of State¹⁸ be restricted to those incurred in the United Kingdom¹⁹. It is lawful for a research council²⁰, in relation to England²¹ and in specified circumstances, to adopt rules of eligibility for awards by confining eligibility to persons who are ordinarily resident in the United Kingdom or any part thereof, where those rules would otherwise be unlawful by reason of discrimination²².

1 As to the Secretary of State see PARA 802 note 2.

2 As to the establishment of research councils see PARA 967.

3 As to the meaning of 'Treasury' see PARA 809 note 4.

4 Science and Technology Act 1965 s 2(1) (amended by SI 1995/2985). As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804.

5 Science and Technology Act 1965 Sch 1 para 1 (amended by SI 1995/2985).

- 6 As to the meaning of 'financial year' see PARA 912 note 6.
- 7 Science and Technology Act 1965 Sch 1 para 2(1) (amended by SI 1995/2985).
- 8 Science and Technology Act 1965 Sch 1 para 2(2) (amended by SI 1995/2985). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.
- 9 Science and Technology Act 1965 Sch 1 para 3(1) (amended by SI 1995/2985).
- 10 Science and Technology Act 1965 Sch 1 para 3(2) (amended by SI 1995/2985). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.
- 11 Science and Technology Act 1965 Sch 1 para 3(3).
- 12 As to the Medical Research Council see PARA 969.
- 13 Science and Technology Act 1965 s 2(4) (amended by SI 1995/2985; Statute Law (Repeals) Act 1998).
- 14 Science and Technology Act 1965 s 2(4) (as amended: see note 13). As to the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 521-526.
- 15 As to the meaning of 'United Kingdom' see PARA 804 note 2.
- 16 Science and Technology Act 1965 s 2(3).
- 17 As to the meaning of 'enactment' see PARA 805 note 5.
- 18 Ie under the Science and Technology Act 1965 s 2(1): see the text to notes 1-4.
- 19 See the Science and Technology Act 1965 s 2(5). In the case of research councils other than the Medical Research Council, the research councils' expenses in respect of which payments may be so made do not include any expenses in so far as they may be incurred for objects falling outside the objects specified in relation to that council in s 1(2) (see PARA 973) or s 1(3) (see PARA 970) or in the Order in Council declaring it to be a research council: s 2(5) (amended by the Statute Law (Repeals) Act 1998).
- 20 Ie the Arts and Humanities Research Council (see PARA 976); the Biotechnology and Biological Sciences Research Council (see PARA 972); the Economic and Social Research Council (see PARA 971); the Engineering and Physical Sciences Research Council (see PARA 973); the Medical Research Council, the Natural Environment Research Council (see PARA 970); and the Science and Technology Facilities Council (see PARA 974): Education (Fees and Awards) (England) Regulations 2007, SI 2007/779, Sch 2 Pt 1. Schedule 2 Pt 1 refers to the Council for the Central Laboratory of the Research Councils, and the Particle Physics and Astronomy Research Council, the rights, liabilities and obligations of both of which are now vested in the Science and Technology Facilities Council: see the Research Councils (Transfer of Property etc) Order 2007, SI 2007/770; and PARA 974.
- 21 The Education (Fees and Awards) (England) Regulations 2007, SI 2007/779, apply in relation to England: see reg 1(2). As to the meaning of 'England' see PARA 804 note 2.
- 22 See the Education (Fees and Awards) (England) Regulations 2007, SI 2007/779, reg 6; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1055.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(15) RESEARCH COUNCILS/969. The Medical Research Council.

969. The Medical Research Council.

The Medical Research Council was incorporated by royal charter on 1 April 1920¹. Its principal function is the promotion of research on all aspects of health and disease².

1 See **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 8. As to the research councils in general see PARA 967. As to expenses and accounts see PARA 968.

2 See **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 8.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(15) RESEARCH COUNCILS/970. The Natural Environment Research Council.

970. The Natural Environment Research Council.

The Natural Environment Research Council is a body established wholly or mainly for objects consisting of or comprised in the following, namely, the carrying out of research in the earth sciences and ecology, the facilitating, encouragement and support of such research by other bodies or persons¹ or any description of bodies or persons and of instruction in subjects related to the council's activities, the dissemination of knowledge in the earth sciences and ecology, the provision of advice on matters related to the council's activities². The council was established by royal charter in 1965 and is a non-departmental public body of the Department for Business, Innovation and Skills³.

For the purpose of making and completing a geological survey of Great Britain⁴ or any part of it, it is lawful for any surveyor or other person appointed by or acting under the orders of the Natural Environment Research Council, and for any person assisting or employed by any surveyor or other person so appointed or acting under such orders, to enter into and upon the land of any owner or person for the purpose of making and carrying on any geological survey authorised by that council, and to break up the surface of any part of the land for the purpose of ascertaining the rocks, strata or minerals within or under it⁵. Notice of the intention to enter must be given in writing⁶. Posts, stones, marks or objects to be used in the survey may be fixed, but the consent of the owner or occupier is required if they are to be fixed within any walled garden, orchard or pleasure ground⁷. If any person resists or wilfully obstructs or hinders any surveyor or other person employed or assisting in the execution of any such survey, or takes away or displaces, or wilfully defaces or destroys, any stone, post, mark or object set up and placed for the purposes of any such survey, he commits an offence⁸.

1 As to the meaning of 'person' see PARA 803 note 16.

2 Science and Technology Act 1965 s 1(3) (amended by the Nature Conservancy Council Act 1973 ss 1(3), (7), 5(2), Sch 2 para 1, Sch 4). As to the research councils in general see PARA 967. As to expenses and accounts see PARA 968.

3 See the website of the Department for Business, Innovation and Skills at www.bis.gov.uk. As to non-departmental public bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

4 As to the meaning of 'Great Britain' see PARA 804 note 2.

5 Geological Survey Act 1845 s 1 (amended by the Statute Law Revision Act 1891; Science and Technology Act 1965 s 3(5), Sch 2). Power is also given to enter into or upon any land through which any such surveyor or other person so appointed or acting or employed finds it necessary to pass for the purposes of the survey, at any reasonable time in the day, until the survey is completed: see the Geological Survey Act 1845 s 1 (as so amended).

6 See the Geological Survey Act 1845 s 1 (as amended: see note 5).

7 See the Geological Survey Act 1845 s 1 (as amended: see note 5). The ground may be dug up for the purpose of fixing any such post, stone or mark: see s 1 (as so amended). As little damage must be done as possible, and satisfaction must be made to the owner or occupier of the land, or the owner of any trees in any way injured, for any damage caused: see s 1 (as so amended). In case of dispute between the surveyor or other persons appointed or employed and the owner or occupier as to the amount of damage sustained, the same must be ascertained and determined by a magistrates' court: see s 1 (as so amended; and further amended by the Courts Act 2003 s 109(1), Sch 8 para 25). As to magistrates' courts see **MAGISTRATES** vol 29(2) (Reissue) PARA 583 et seq.

8 See the Geological Survey Act 1845 s 2 (amended by the Statute Law Revision Act 1891; Science and Technology Act 1965 s 3(5), Sch 2; and by virtue of the Criminal Justice Act 1982 ss 38, 46). The penalty for such an offence is, on summary conviction, a fine not exceeding level 1 on the standard scale: see the Geological Survey Act 1845 s 2 (as so amended). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(15) RESEARCH COUNCILS/971. The Economic and Social Research Council.

971. The Economic and Social Research Council.

The Economic and Social Research Council was established by royal charter under the name of the Social Science Research Council¹ and is a research council for purposes of the Science and Technology Act 1965². Its objects are: (1) to encourage and support by any means research in the social sciences by any other person³ or body⁴; (2) without prejudice to head (1), to provide and operate services for common use in carrying on such research⁵; (3) to carry out research in the social sciences⁶; (4) to make grants to students for postgraduate instruction in the social sciences⁷; and (5) to provide advice and disseminate knowledge concerning the social sciences⁸. The council is a non-departmental public body of the Department for Business, Innovation and Skills⁹.

1 See the website of the Economic and Social Research Council at www.esrcsocietytoday.ac.uk. The council was renamed with effect from 1 January 1984.

2 See the Social Science Research Council Order 1965, SI 1965/2015, art 1. As to the research councils in general see PARA 967. As to expenses and accounts see PARA 968.

3 As to the meaning of 'person' see PARA 803 note 16.

4 Social Science Research Council Order 1965, SI 1965/2015, Schedule para (a).

5 Social Science Research Council Order 1965, SI 1965/2015, Schedule para (b).

6 Social Science Research Council Order 1965, SI 1965/2015, Schedule para (c).

7 Social Science Research Council Order 1965, SI 1965/2015, Schedule para (d).

8 Social Science Research Council Order 1965, SI 1965/2015, Schedule para (e).

9 See the website of the Department for Business, Innovation and Skills at www.bis.gov.uk. As to non-departmental public bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(15) RESEARCH COUNCILS/972. The Biotechnology and Biological Sciences Research Council.

972. The Biotechnology and Biological Sciences Research Council.

The Biotechnology and Biological Sciences Research Council was established by royal charter in 1994 by the incorporation of the former Agricultural and Food Research Council¹ with certain relevant research programmes of the former Science and Engineering Research Council². The council is a research council for purposes of the Science and Technology Act 1965³. The objects of the council are:

- 255 (1) to promote and support, by any means, high quality basic, strategic and applied research and related postgraduate training relating to the understanding and exploitation of biological systems⁴;
- 256 (2) to advance knowledge and technology, and provide trained scientists and engineers, which meet the needs of users and beneficiaries (including the agriculture, bioprocessing, chemical, food, health-care, pharmaceutical and other biotechnological-related industries), thereby contributing to the economic competitiveness of the United Kingdom⁵ and the quality of life⁶;
- 257 (3) to provide advice, disseminate knowledge, and promote public understanding in the fields of biotechnology and the biological sciences⁷.

The council is a non-departmental public body of the Department for Business, Innovation and Skills⁸.

1 The former Agricultural and Food Research Council, incorporated under the name of the Agricultural Research Council by royal charters of 1931, 1933 and 1950 and renamed by royal charter in 1983, was charged with the organisation and development of agricultural research and had power, in particular, to establish institutions and make grants for investigation and research relating to the advancement of agriculture: see the Agricultural Research Act 1956 s 1(1) (repealed).

2 See the website of the Biotechnology and Biological Sciences Research Council at www.bbsrc.ac.uk. See also the Research Councils (Transfer of Property etc) Order 1994, SI 1994/611.

3 Biotechnology and Biological Sciences Research Council Order 1994, SI 1994/423, art 1. As to the research councils in general see PARA 967. As to expenses and accounts see PARA 968.

4 Biotechnology and Biological Sciences Research Council Order 1994, SI 1994/423, Schedule para (a).

5 As to the meaning of 'United Kingdom' see PARA 804 note 2.

6 Biotechnology and Biological Sciences Research Council Order 1994, SI 1994/423, Schedule para (b).

7 Biotechnology and Biological Sciences Research Council Order 1994, SI 1994/423, Schedule para (c).

8 See the website of the Department for Business, Innovation and Skills at www.bis.gov.uk. As to non-departmental public bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(15) RESEARCH COUNCILS/973. The Engineering and Physical Sciences Research Council.

973. The Engineering and Physical Sciences Research Council.

The Secretary of State¹ may defray out of money provided by Parliament² any expenses which, with Treasury consent, he may incur in carrying on or supporting scientific research or the dissemination of the results of scientific research³, in furthering the practical application of the results of scientific research⁴, and in making payments in respect of remuneration, allowances or pension benefits payable to or in respect of members of any advisory body established for the purposes of assisting him in matters connected with scientific research⁵.

The Engineering and Physical Sciences Research Council was established by royal charter⁶ and is a research council for purposes of the Science and Technology Act 1965⁷. The objects of the council are:

- 258 (1) to promote and support, by any means, high quality basic, strategic and applied research and related postgraduate training in engineering and the physical sciences⁸;
- 259 (2) to advance knowledge and technology, and provide trained scientists and engineers, which meet the needs of users and beneficiaries (including the chemical, communications, construction, electrical, electronic, engineering, information technology, pharmaceutical, process and other industries), thereby contributing to the economic competitiveness of the United Kingdom⁹ and the quality of life¹⁰;
- 260 (3) to provide advice, disseminate knowledge, and promote public understanding in the fields of engineering and the physical sciences¹¹.

The council is a non-departmental public body of the Department for Business, Innovation and Skills¹².

1 The Science and Technology Act 1965 s 5(1) was amended so as to read 'the Secretary of State or the Minister of Agriculture, Fisheries and Food': see the Transfer of Functions (Scientific Research) Order 1999, SI 1999/2785, art 2(2). The Ministry of Agriculture, Fisheries and Food was dissolved and the functions of the minister transferred to the Secretary of State: see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794, art 2. The functions of a Minister of the Crown under the Science and Technology Act 1965 s 5, in so far as they relate to Wales but except so far as relating to research councils, are exercisable by the Welsh Ministers concurrently with the Secretary of State; and are exercisable by the Welsh Ministers free from the requirement for Treasury consent: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4. As to the meaning of 'Treasury' see PARA 809 note 4.

2 As to the provision of money by Parliament see PARLIAMENT vol 78 (2010) PARA 804.

3 Science and Technology Act 1965 s 5(1)(a) (amended by SI 1971/719; SI 1995/2985). As to the meaning of 'scientific research' see PARA 967 note 5. The functions of the United Kingdom Atomic Energy Authority include the undertaking of scientific research in such matters not connected with atomic energy as may, after consultation with the authority, be required by the Secretary of State: see the Science and Technology Act 1965 s 4(1) (amended by virtue of SI 1970/1537; SI 1974/692; SI 1992/1314). The Atomic Energy Authority Act 1954 s 2(2) applies as if the relevant research were research into matters connected with atomic energy: Science and Technology Act 1965 s 4(1). See further FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1369.

4 Science and Technology Act 1965 s 5(1)(b) (substituted by SI 1992/1296).

5 Science and Technology Act 1965 s 5(1)(c) (amended by SI 1995/2985).

6 See the Engineering and Physical Sciences Research Council website at www.epsrc.ac.uk. The former Science and Engineering Research Council, established as the Science Research Council, was a body established wholly or mainly for objects consisting of or comprised in the carrying out of scientific research, the facilitating, encouragement and support of scientific research by other bodies or persons or any description of bodies or persons and of instruction in the sciences and technology, and the dissemination of knowledge in the sciences and technology: see the Science and Technology Act 1965 s 1(2). Its biotechnology and biological sciences programmes were incorporated into the Biotechnology and Biological Sciences Research Council in 1994 (see PARA 972) and most of its other property, rights, liabilities and obligations were transferred to the Engineering and Physical Sciences Research Council: see the Research Councils (Transfer of Property etc) Order 1994, SI 1994/611.

7 See the Engineering and Physical Sciences Research Council Order 1994, SI 1994/424, art 1. As to the research councils in general see PARA 967. As to expenses and accounts see PARA 968.

8 Engineering and Physical Sciences Research Council Order 1994, SI 1994/424, Schedule para (a).

9 As to the meaning of 'United Kingdom' see PARA 804 note 2.

10 Engineering and Physical Sciences Research Council Order 1994, SI 1994/424, Schedule para (b).

11 Engineering and Physical Sciences Research Council Order 1994, SI 1994/424, Schedule para (c). All rights, liabilities and obligations of the Engineering and Physical Sciences Research Council arising in connection with the award of the research grants and fellowships relating to nuclear physics were transferred to the Science and Technology Facilities Council: see the Research Councils (Transfer of Property etc) Order 2007, SI 2007/770, art 9, Sch 6; and PARA 974.

12 See the website of the Department for Business, Innovation and Skills at www.bis.gov.uk. As to non-departmental public bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(15) RESEARCH COUNCILS/974. The Science and Technology Facilities Council.

974. The Science and Technology Facilities Council.

The Science and Technology Facilities Council was established by royal charter¹ and is a research council for the purposes of the Science and Technology Act 1965². The objects of the council are:

- 261 (1) to promote and support high-quality scientific and engineering research by developing and providing, by any means, facilities and technical expertise in support of basic, strategic and applied research programmes funded by persons³ established in the United Kingdom⁴ and elsewhere⁵;
- 262 (2) to promote and support, by any means, high-quality basic, strategic and applied research and related postgraduate training in astronomy, particle physics, space science and nuclear physics and research in any other field which makes use of scientific facilities where access is provided, arranged or otherwise made available by the council, having regard to the objects of the other research councils⁶;
- 263 (3) to promote and support the advancement of knowledge and technology (including the promotion and support of the exploitation of research outcomes) and to provide trained scientists and engineers, and thereby to contribute to the economic competitiveness of the United Kingdom and the quality of life of its people, meeting the needs of users and beneficiaries⁷;
- 264 (4) in relation to the activities as engaged in by the council above, and in such manner as the council may see fit, to generate public awareness, to communicate research outcomes, to encourage public engagement and dialogue, to disseminate knowledge, and to provide advice⁸.

The council is a non-departmental public body of the Department for Business, Innovation and Skills⁹.

1 See the Science and Technology Facilities Council website at www.stfc.ac.uk.

2 See the Science and Technology Facilities Council Order 2007, SI 2007/279, art 1. The council was formed through a merger of the former Council for the Central Laboratory of the Research Councils and the Particle Physics and Astronomy Research Council and the transfer of responsibility for nuclear physics from the Engineering and Physical Sciences Research Council (see PARA 973); see the Research Councils (Transfer of Property etc) Order 2007, SI 2007/770. As to the research councils in general see PARA 967. As to expenses and accounts see PARA 968.

3 As to the meaning of 'person' see PARA 803 note 16.

4 As to the meaning of 'United Kingdom' see PARA 804 note 2.

5 Science and Technology Facilities Council Order 2007, SI 2007/279, Schedule para (a).

6 Science and Technology Facilities Council Order 2007, SI 2007/279, Schedule para (b).

7 Science and Technology Facilities Council Order 2007, SI 2007/279, Schedule para (c).

8 Science and Technology Facilities Council Order 2007, SI 2007/279, Schedule para (d).

9 See the website of the Department for Business, Innovation and Skills at www.bis.gov.uk. As to non-departmental public bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(15) RESEARCH COUNCILS/975. The Technology Strategy Board.

975. The Technology Strategy Board.

The Technology Strategy Board was established by royal charter¹ and is a research council for the purposes of the Science and Technology Act 1965². The board is established and incorporated for purposes connected with research into, and the development and exploitation of, science, technology and new ideas, with the aim of increasing economic growth and improving quality of life in the United Kingdom³. In fulfilling these purposes the board is to have particular regard to the benefits to be gained by those engaging in business activities in the United Kingdom⁴. For these purposes, the board may, in particular:

- 265 (1) promote and support research into, and the development and exploitation of, science, technology and new ideas, by those engaged in business activities⁵;
- 266 (2) promote and support the use of, and investment in, science, technology and new ideas, by those engaged in business activities⁶;
- 267 (3) collect and disseminate knowledge about the use of, and investment in, science, technology and new ideas⁷;
- 268 (4) contribute to building public confidence in, and understanding of, research into, and the development and exploitation of, science, technology and new ideas⁸; and
- 269 (5) advise government on strategies for, and respond to questions posed by government about, the use of, and investment in, science, technology and new ideas, by those engaged in business activities⁹.

The council is a non-departmental public body of the Department for Business, Innovation and Skills¹⁰.

1 See the Technology Strategy Board Annual Report and Accounts 2007-2008, a copy of which is available on the board's website at www.innovateuk.org.

2 See the Technology Strategy Board Order 2007, SI 2007/280, art 1. As to the research councils in general see PARA 967. As to expenses and accounts see PARA 968. All property, rights, liabilities and obligations of the Secretary of State in relation to certain contracts and grants have been transferred to the board: see the Technology Strategy Board (Transfer of Property etc) Order 2007, SI 2007/1676; and the Technology Strategy Board (Transfer of Property etc) Order 2008, SI 2008/1405. As to the Secretary of State see PARA 802 note 2.

3 Technology Strategy Board Order 2007, SI 2007/280, Schedule para 1(1). As to the meaning of 'United Kingdom' see PARA 804 note 2.

4 See the Technology Strategy Board Order 2007, SI 2007/280, Schedule para 1(1).

5 Technology Strategy Board Order 2007, SI 2007/280, Schedule para 1(2)(a).

6 Technology Strategy Board Order 2007, SI 2007/280, Schedule para 1(2)(b).

7 Technology Strategy Board Order 2007, SI 2007/280, Schedule para 1(2)(c).

8 Technology Strategy Board Order 2007, SI 2007/280, Schedule para 1(2)(d).

9 Technology Strategy Board Order 2007, SI 2007/280, Schedule para 1(2)(e).

10 See the website of the Department for Business, Innovation and Skills at www.bis.gov.uk. As to non-departmental public bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(15) RESEARCH COUNCILS/976. The Arts and Humanities Research Council.

976. The Arts and Humanities Research Council.

The Arts and Humanities Research Council is a body established by royal charter wholly or mainly for objects consisting of, or comprised in, the following:

- 270 (1) carrying out, facilitating, encouraging and supporting research in the arts and humanities, and instruction in the arts and humanities¹;
- 271 (2) advancing and disseminating knowledge in, and promoting understanding of, the arts and humanities²;
- 272 (3) promoting awareness of its activities³; and
- 273 (4) providing advice on matters relating to its activities⁴.

The activities of the council are not restricted to the United Kingdom or any part of the United Kingdom⁵.

The council must give the Secretary of State⁶ such returns, accounts and other information relating to its property and activities as the Secretary of State requires⁷. As soon as possible after the end of each financial year⁸, the council must give the Secretary of State a report on the performance of its functions during that year⁹; and the Secretary of State must lay a copy of any such report, including any comments which he has on the report¹⁰, before each House of Parliament¹¹.

The Secretary of State may pay the council such sums as he determines in respect of the expenses that the council has incurred, or expects to incur, in carrying out its objects¹². The council must comply with any direction of the Secretary of State as to the use or expenditure of such payments¹³; and must give the Secretary of State programmes and estimates of its expenses¹⁴. The council must keep proper accounts and other records¹⁵, and must give the Secretary of State a statement of accounts in relation to each financial year¹⁶. The Secretary of State must transmit each statement of accounts to the Comptroller and Auditor General¹⁷ on or before 30 November following the end of the financial year to which the statement relates¹⁸; and the Comptroller and Auditor General must examine and certify each such statement of accounts¹⁹, and lay before each House of Parliament a copy of the accounts²⁰ and a report on the accounts²¹.

The Secretary of State or, in relation to Wales, the Welsh Ministers²² may: (a) carry out or support research in the arts and humanities²³; (b) disseminate the results of research in the arts and humanities²⁴; (c) further the practical application of the results of research in the arts and humanities²⁵; (d) establish advisory bodies for the purpose of assisting the Secretary of State or, as the case may be, the Welsh Ministers in matters connected with research in the arts and humanities²⁶; and (e) if such a body is established, appoint its members on terms which include the payment of remuneration, allowances or pension benefits to or in respect of them²⁷.

1 Higher Education Act 2004 s 1(a).

2 Higher Education Act 2004 s 1(b).

3 Higher Education Act 2004 s 1(c).

4 Higher Education Act 2004 s 1(d). All property, rights and liabilities to which the Arts and Humanities Research Board was entitled or subject immediately before 1 April 2005 were transferred to the council on that

day: see s 2; Higher Education Act 2004 (Commencement No 3) Order 2005, SI 2005/767, art 2. Nothing in the Higher Education Act 2004 Pt 1 (ss 1-10) affects: (1) any power to amend or revoke the charter of the council (s 9(a)); or (2) the operation of any amendment made to the charter of the council (s 9(b)). Employment by the Arts and Humanities Research Council is included in the kinds of employment to which a scheme under the Superannuation Act 1972 s 1 (see PARA 896) can apply: s 5.

- 5 Higher Education Act 2004 s 8. As to the meaning of 'United Kingdom' see PARA 804 note 2.
- 6 As to the Secretary of State see PARA 802 note 2.
- 7 Higher Education Act 2004 s 4(1).
- 8 'Financial year' means a period of 12 months ending with 31 March: Higher Education Act 2004 ss 4(5), 6(6).
- 9 Higher Education Act 2004 s 4(2).
- 10 See the Higher Education Act 2004 s 4(4).
- 11 Higher Education Act 2004 s 4(3). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.
- 12 Higher Education Act 2004 s 3(1). This provision applies whether the council has incurred, or expects to incur, the expenses in the United Kingdom or elsewhere: s 3(2).
- 13 Higher Education Act 2004 s 3(3).
- 14 Higher Education Act 2004 s 3(4). The programmes and estimates must be given in the form required by the Secretary of State (s 3(5)(a)), and at the times required by the Secretary of State (s 3(5)(b)).
- 15 Higher Education Act 2004 s 6(1).
- 16 Higher Education Act 2004 s 6(2). A statement of accounts must be given in the form required by the Secretary of State (s 6(3)(a)), and at the time required by the Secretary of State (s 6(3)(b)).
- 17 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.
- 18 Higher Education Act 2004 s 6(4).
- 19 Higher Education Act 2004 s 6(5)(a).
- 20 Higher Education Act 2004 s 6(5)(b)(i).
- 21 Higher Education Act 2004 s 6(5)(b)(ii).
- 22 The functions under the Higher Education Act 2004 s 10 were originally vested in the National Assembly for Wales and are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.
- 23 Higher Education Act 2004 s 10(1)(a), (2)(a).
- 24 Higher Education Act 2004 s 10(1)(b), (2)(b).
- 25 Higher Education Act 2004 s 10(1)(c), (2)(c).
- 26 Higher Education Act 2004 s 10(1)(d), (2)(d).
- 27 See the Higher Education Act 2004 s 10(1)(e), (2)(e). Similar powers are given to the Scottish Ministers, in relation to Scotland, and the Northern Ireland Department having responsibility for higher education, in relation to Northern Ireland: see s 10(3), (4). As to the Scottish Ministers, and devolved government in Northern Ireland see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(16) CHARITABLE INSTITUTIONS GENERALLY/977. Charitable institutions.

(16) CHARITABLE INSTITUTIONS GENERALLY

977. Charitable institutions.

Institutions founded for such purposes as the promotion of science, the fine arts, education¹ or public libraries or museums² may be charitable, if the necessary element of public benefit is present³. An institution may have been founded for a single purpose which, at the time of the institution's foundation, was considered charitable, but which may not be considered to be charitable by a later generation; in such a case, in the absence of a general charitable intention, a gift in perpetuity to the institution would fail⁴.

1 See **CHARITIES** vol 8 (2010) PARAS 22-27.

2 See **CHARITIES** vol 8 (2010) PARA 37.

3 See **CHARITIES** vol 8 (2010) PARA 6 et seq; and see eg *Beaumont v Oliveira* (1869) 4 Ch App 309 (society for the improvement and diffusion of geographical knowledge); *Royal Society of London and Thompson* (1881) 17 ChD 407 (societies for improving natural knowledge); *Re Lopes, Bence-Jones v Zoological Society of London* [1931] 2 Ch 130 (society for the advancement of zoology and animal physiology etc); and *Institution of Civil Engineers v IRC* [1932] 1 KB 149, CA (society for the general advancement of mechanical science); cf *Geologists' Association v IRC* (1928) 14 TC 271, CA; *Midland Counties Institution of Engineers v IRC* (1928) 14 TC 285, CA; *Anglo-Swedish Society v IRC* (1931) 47 TLR 295; *IRC v National Book League* [1957] Ch 488, [1957] 2 All ER 644, CA (all bodies primarily of benefit to members, rather than of general public utility). As to the jurisdiction of the Charity Commission in respect of institutions of a charitable nature and the property of such institutions see **CHARITIES** vol 8 (2010) PARA 538 et seq; and as to the jurisdiction of the Secretary of State in that respect see **CHARITIES** vol 8 (2010) PARA 579.

4 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 74, [1947] 2 All ER 217 at 238, HL, per Simonds LJ. A trust with a political purpose is not, however, charitable: *McGovern v A-G* [1982] Ch 321, [1981] 3 All ER 493.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(16) CHARITABLE INSTITUTIONS GENERALLY/978. Privileges and exemptions.

978. Privileges and exemptions.

Societies whose purposes entitle them to be regarded as charitable institutions are only liable to pay one fifth of the non-domestic rates which would otherwise be chargeable in respect of property which they occupy, where such property is wholly or mainly used for charitable purposes, and are not liable to pay non-domestic rates in respect of unoccupied properties¹. Further reduction or remission of the chargeable amount is permissible, where the billing authority so decides, for such societies and for premises owned or occupied by societies which are not established or conducted for profit and whose main objects are charitable or otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts².

Fair and accurate reports of findings or decisions of associations for the purpose of promoting or encouraging the exercise of or interest in art, science, religion or learning may enjoy qualified privilege in proceedings for defamation³.

A lottery promoted wholly on behalf of a non-commercial society⁴ is exempt from the requirement for an operating licence⁵.

Certain literary, scientific and cultural institutions are exempt, in so far as they are charities, from the requirement of registration under the Charities Act 1993⁶.

Charitable and other institutions enjoy certain exemptions from tax⁷.

1 See the Local Government Finance Act 1988 ss 43(5), (6), 45A; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARAS 73, 78.

2 See the Local Government Finance Act 1988 s 47(2)(b), (3), (4); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARAS 80-81.

3 See the Defamation Act 1996 s 15, Sch 1 Pt II para 14(a); and **LIBEL AND SLANDER** vol 28 (Reissue) PARA 133.

4 A society is non-commercial if it is established and conducted (1) for charitable purposes; (2) for the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity; or (3) for any other non-commercial purpose other than that of private gain: see the Gambling Act 2005 ss 19(1), 353(1); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 377.

5 See the Gambling Act 2005 Sch 11 para 30; and **LICENSING AND GAMBLING** vol 68 (2008) PARA 662.

6 See the Charities Act 1993 ss 3, 3A (s 3 substituted, s 3A added, by the Charities Act 2006 s 9); and **CHARITIES** vol 8 (2010) PARA 305. The relevant institutions are: (1) the Board of Trustees of the Victoria and Albert Museum (see PARA 864); (2) the Board of Trustees of the Science Museum (see PARA 870); (3) the Board of Trustees of the Armouries (see PARA 876); (4) the Board of Trustees of the Royal Botanic Gardens, Kew (see PARA 883); (5) the Board of Trustees of the National Museums and Galleries on Merseyside; (6) the trustees of the British Museum (see PARA 827) and of the Natural History Museum (see PARA 826); (7) the Board of Trustees of the National Gallery (see PARA 836); (8) the Board of Trustees of the Tate Gallery (see PARA 836); (9) the Board of Trustees of the National Portrait Gallery (see PARA 836); (10) the Board of Trustees of the Wallace Collection (see PARA 836); (11) the trustees of the Imperial War Museum (see PARA 844); (12) the trustees of the National Maritime Museum (see PARA 850); (13) any institution which is administered by or on behalf of an institution included in heads (1)-(12) and established for the general purposes of, or for any special purpose of or in connection with, that institution; (14) any registered society or branch within the meaning of the Friendly Societies Act 1974 (repealed with savings); (15) the Board of Governors of the Museum of London (see PARA 857); and (16) the British Library Board (see PARA 908): see the Charities Act 1993 Sch 2.

7 See PARAS 1108, 1109.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(i) Constitution/979. Unique position and incorporation of the National Trust.

(17) THE NATIONAL TRUST

(i) Constitution

979. Unique position and incorporation of the National Trust.

Many open spaces and recreation grounds have been provided by individuals¹ and by philanthropic bodies², and gifts for their provision constitute gifts for charitable purposes³ provided they are capable of benefiting the whole community or a sufficiently large section of it⁴. However, few, if any, private persons have received statutory powers in respect of such matters, and the National Trust for Places of Historic Interest or Natural Beauty (commonly known as the National Trust)⁵, is the only philanthropic body which, in recent years, has received statutory powers for such purposes exercisable beyond some particular district.

The trust was reincorporated in 1907 by private Act of Parliament⁶ as a body corporate with perpetual succession and a common seal and with power to purchase, take, hold, deal with and dispose of land and other property⁷. The management of the affairs of the trust is currently governed by the National Trust Act 1971⁸ but a scheme altering or affecting the management of the trust's affairs has been made to have effect from the appointed day⁹.

1 Eg the museum and pleasure grounds (called the Larmer Grounds) provided by General Pitt Rivers at Rushmore on the borders of Dorset and Wiltshire. As to the terms of the trust relating to these grounds see *Re Pitt Rivers, Scott v Pitt Rivers* [1902] 1 Ch 403, CA.

2 Eg the Open Spaces Society (formerly the Commons, Open Spaces and Footpaths Preservation Society) and the Metropolitan Public Gardens Association.

3 See *Re Hadden, Public Trustee v More* [1932] 1 Ch 133; *IRC v City of London Corpn* [1953] 1 All ER 1075, [1953] 1 WLR 652, HL; *Re Morgan, Cecil-Williams v A-G* [1955] 2 All ER 632, [1955] 1 WLR 738; *Brisbane City Council and Myer Shopping Centres Pty Ltd v A-G for Queensland* [1979] AC 411, [1978] 3 All ER 30, PC; and **CHARITIES** vol 8 (2010) PARA 48. See also the Recreational Charities Act 1958; and **CHARITIES** vol 8 (2010) PARAS 52-55.

4 See *IRC v Baddeley* [1955] AC 572, [1955] 1 All ER 525, HL.

5 See the National Trust Act 1907 ss 1, 2; the National Trust Act 1937 ss 1, 2; the National Trust Act 1939 ss 1, 2; the National Trust Act 1953 ss 1, 2; and the National Trust Act 1971 ss 1, 3(1).

6 See the National Trust Act 1907 preamble, s 3. The National Trust Act 1907 has been subsequently amended and added to by the following Acts, all of which may be cited together as the National Trust Acts 1907 to 1971: the National Trust Charity Scheme Confirmation Act 1919, the National Trust Act 1937, the National Trust Act 1939, the National Trust Act 1953, and the National Trust Act 1971: see s 1(2). These Acts originally applied to the whole of the United Kingdom and the Isle of Man except that the National Trust Act 1937, the National Trust Act 1939 and the National Trust Act 1971 do not extend to Northern Ireland: see the National Trust Act 1939 s 16(2); National Trust Act 1971 s 33. The National Trust Act 1907, the National Trust Act 1937 and the National Trust Act 1939 are now repealed in relation to the Isle of Man: see the Statute Law (Repeals) Act 2004. As to the meaning of 'United Kingdom' see PARA 804 note 2.

7 See the National Trust Act 1907 s 3. Note that the reference to mortmain in s 3 is obsolete following the repeal of the law of mortmain by the Charities Act 1960 s 38: see **CHARITIES** vol 8 (2010) PARAS 82-83.

An association not for profit was registered in 1894 under the Companies Acts 1862 to 1890 (see **COMPANIES** vol 14 (2009) PARAS 10-11), having the same name and similar objects to those of the present trust. The property, rights and liabilities of this association were vested in the trust and its memorandum and articles made void but without prejudice to existing rights and liabilities: see the National Trust Act 1907, preamble, ss 6-13 (s 10

repealed), 37. Provision was made for a copy of the National Trust Act 1907 to be delivered to the Registrar of Joint Stock Companies (see s 38 (repealed)) and for the costs of the passing of the Act to be paid by the National Trust (see s 39 (repealed)). Provision was made for the costs, charges and expenses of and incidental to the preparation of, the applying for and the obtaining and passing of the National Trust Acts or otherwise in relation to them to be paid by the National Trust, to be defrayed in whole or in part out of income: see the National Trust Act 1937 s 16 (repealed); the National Trust Act 1939 s 17 (repealed); the National Trust Act 1953 s 5 (repealed); and the National Trust Act 1971 s 34 (repealed).

8 See PARA 981.

9 From the appointed day until the new constitution date the National Trust must be administered in accordance with the provisions of the National Trust Acts 1907 to 1971 as modified by the transitional provisions set out in the scheme altering or affecting the trusts of the charity known as the National Trust for Places of Historic Interest or Natural Beauty under the Charities (National Trust) Order 2005, SI 2005/712, Appendix (the 'scheme'): see Appendix clause 2(1). As to the transitional provisions see the Schedule Pt 1. From the new constitution date the trust must be administered in accordance with the provisions of the National Trust Acts 1907 to 1971 as modified by the scheme: Appendix clause 2(2). The commissioners may decide any question put to them concerning the interpretation of the scheme, or the propriety or validity of anything done or intended to be done under it: Appendix clause 46. 'Appointed day' means the day on which the scheme is given effect by an order of the Secretary of State under the Charities Act 1993 s 17(2) (see **CHARITIES** vol 8 (2010) PARA 191); and 'new constitution date' means the later of 1 September 2005 and the date two months after that on which the scheme is given effect by such an order: see the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 1(1). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 802 note 2. As to the meaning of 'month' see PARA 803 note 11. 'Commissioners' means the Charity Commission for England and Wales: Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 1(1) (definition amended by virtue of the Charities Act 2006 s 6(5)). As to the Charity Commission see **CHARITIES** vol 8 (2010) PARA 538 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(i) Constitution/980. Members of the National Trust.

980. Members of the National Trust.

The members of the National Trust¹ are divided into the following classes: (1) ordinary subscribing members, being annual subscribers of such minimum annual subscription as from time to time may be determined by the Council of the National Trust²; (2) life members, being persons who have made a subscription of not less than such minimum amount as at the time when the subscription was made had been determined by resolution of the council³; (3) benefactors, being persons who have given to the trust such sum of money or other property as, in the council's opinion, is such as to entitle such persons to be distinguished as benefactors⁴; (4) corporate members, being such corporate or other bodies or associations as the council from time to time may by resolution determine who make annual subscriptions of such minimum amount as the council from time to time may by resolution determine⁵; (5) junior members, being annual subscribers of such minimum annual subscription and of such an age as the council from time to time may by resolution determine⁶; (6) family members, being persons who are members of the family of an ordinary subscribing member residing with that member and who make an annual subscription of such minimum amount as the council from time to time may by resolution determine⁷; and (7) such other classes as the council from time to time may by resolution determine⁸.

No member is to be liable for, or to contribute towards, the payment of the debts and liabilities of the trust beyond the amount of his annual subscription or of any contribution agreed to be given and remaining unpaid⁹. No dividend, bonus or other profit may at any time be paid out of the income or property of the trust to any member¹⁰.

As from a day to be appointed the powers and duties conferred on the council by the above provisions become powers and duties of the Board of Trustees¹¹.

1 As to the National Trust see PARA 979.

2 National Trust Act 1971 s 4(1)(a), (2). The minimum annual subscription is to be determined by resolution in accordance with the National Trust Act 1953 s 3: see the National Trust Act 1971 s 4(2). The council may by resolution from time to time determine the minimum amount of the annual subscription required for qualification as an ordinary subscribing member of the National Trust: see the National Trust Act 1953 s 3(1). As to the Council of the National Trust see PARA 981. As to the proceedings of the council see PARA 985.

3 National Trust Act 1971 s 4(1)(b), (3).

4 National Trust Act 1971 s 4(1)(c), (4).

5 National Trust Act 1971 s 4(1)(d), (5). Different minimum annual subscriptions may be determined for different classes of corporate members: see s 4(5).

6 National Trust Act 1971 s 4(1)(e), (6).

7 National Trust Act 1971 s 4(1)(f), (7).

8 National Trust Act 1971 s 4(1)(g).

9 National Trust Act 1907 s 16.

10 National Trust Act 1907 s 5. Notwithstanding this provision any member, not being a member of the council, may be permitted to occupy any trust property either at the best rent that could reasonably be obtained or, in the case of any property not acquired as an investment (under the National Trust Act 1937 s 4(a): see PARA 991), at a less rent or gratuitously and on such other terms and conditions as the council thinks

fit to approve: National Trust Act 1971 s 26. However, a member of the executive committee, a regional committee, a local or other committee or a sub-committee of the council who resides in or occupies any of the trust property must declare the nature of his interest at any meeting of that committee at which any question in relation to that property is considered, and he may not take part in the consideration or discussion of, or vote on, the question: s 26 proviso. As from a day to be appointed s 26 is amended by the repeal of the words 'not being a member of council' and the repeal of s 26 proviso: see s 26 (prospectively amended by SI 2005/712). At the date at which this volume states the law no such day had been appointed. 'Trust property' includes all property from time to time vested for a legal estate in the National Trust: National Trust Act 1937 s 2; National Trust Act 1971 s 3(1).

11 See PARA 986.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(i) Constitution/981. The Council of the National Trust.

981. The Council of the National Trust.

Until a day to be appointed the following provisions have effect¹.

The affairs of the National Trust² are administered by a council³ called the 'Council of the National Trust' consisting of 52 persons of whom 26 are elected members and 26 are appointed members⁴. The council is deemed fully constituted and all its acts and proceedings are deemed valid if and so long as 26 members have been elected to the council⁵. The council must elect from its number a chairman and a deputy chairman of the National Trust⁶.

As from a day to be appointed the following provisions have effect⁷.

As from the new constitution date⁸ all powers and duties conferred on the council by any provision of the National Trust Acts 1907 to 1971 for the time being in force become powers and duties of the Board of Trustees⁹.

The Council is to continue to have 52 members¹⁰ and must meet at least once a year¹¹. All members of the council hold office for three years from the date of their appointment or election, as the case may be¹²; and a member of the council may resign at any time by giving notice in writing¹³ to the chairman¹⁴. The members of the council must appoint from their number a chairman (to be known as the 'chairman of the National Trust')¹⁵, a deputy chairman (to be known as the 'deputy chairman of the National Trust')¹⁶, and a person (the 'senior member of the council'), who must not be a member of the Board of Trustees, to exercise the functions conferred on him or her¹⁷. The chairman, deputy chairman and senior member of the council hold office for three years and must then retire from office, but are eligible for re-appointment¹⁸. A person who before being appointed as chairman or deputy chairman is not a member of the Board of Trustees becomes a member of the board upon appointment and remains a member for as long as he or she remains chairman or deputy chairman¹⁹. The council may by resolution remove the chairman, the deputy chairman or the senior member²⁰. No person is eligible for appointment or election (as the case may be) as chairman or deputy chairman, or as a member of the council, unless that person is a member of the trust²¹. Provision is made for the payment of expenses and remuneration to the chairman, deputy chairman and members of the council²².

1 As from a day to be appointed the National Trust Act 1971 ss 6-10, 16-19, Sch 1 are repealed by the Charities (National Trust) Order 2005, SI 2005/712, art 2, Appendix clause 2(3), Schedule Pt 2. At the date at which this volume states the law no such day had been appointed.

2 As to the National Trust see PARA 979.

3 In the National Trust Acts 1907 to 1971, the 'council' means the Council of the National Trust: National Trust Act 1907 s 2; National Trust Act 1937 s 2; National Trust Act 1939 s 2; National Trust Act 1953 s 2; National Trust Act 1971 s 3(1). As to the National Trust Acts 1907 to 1971 see PARA 979 note 6.

4 National Trust Act 1971 s 6(1). 'Elected member' means a member of the council elected pursuant to s 7; and 'appointed member' means a member of the council appointed pursuant to s 8: s 3(1) (definitions prospectively repealed by SI 2005/712). As to elected members see s 7 (amended by the Statute Law (Repeals) Act 2004). As to appointed members see the National Trust Act 1971 s 8, Sch 1 (s 8 amended by the Statute Law (Repeals) Act 2004). No person is capable of being a member of the council if at the time of appointment he has attained the age of 75 (see the National Trust Act 1971 s 16(1), (4)(b)), and a member of the council must vacate his office at the conclusion of the annual general meeting next after he attains that age (see s 16(2)). If a member of the council, throughout a period of 12 consecutive months, fails to attend any meeting, then, unless the failure was due to some reason approved by resolution of the council, he ceases to be a

member of the council: s 17(1). As to the meaning of 'month' see PARA 803 note 11. Members of the council may have their expenses incurred as members defrayed by the trust: see the National Trust Act 1971 s 19.

5 National Trust Act 1971 s 6(2). As to the filling of casual vacancies see s 10(1), (2).

6 National Trust Act 1971 s 9(1). The council may elect a person who is not a member of the council to be chairman and so long as that person holds office the membership of the council is increased to 53: s 9(1) proviso. A chairman or deputy chairman holds office for three years and must then retire but is eligible for re-election: s 9(2). The age limit for a chairman or deputy chairman is 70: see s 16(1), (4)(a). He must vacate his office at the conclusion of the annual general meeting commencing next after he attains that age: s 16(2). If the chairman or deputy chairman dies or resigns or becomes disqualified the council must appoint another person in his place: see s 10(3). As to the remuneration of the chairman see s 18(1).

7 As to the provisions in respect of the coming into force of the scheme altering or affecting the trusts of the National Trust under the Charities (National Trust) Order 2005, SI 2005/712, see PARA 803 note 11.

8 As to the meaning of 'new constitution date' see PARA 803 note 11.

9 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 2(4). As to the Board of Trustees see PARA 982.

10 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 14(1). 26 such members are to be persons elected by members of the trust ('elected members') (see Appendix clauses 1(1), 14(1)(a)) and 26 are to be appointed ('appointed members') (see Appendix clauses 1(1), 14(1)(b)). As to the election of members of the council see Appendix clause 16; and as to the appointment of members see Appendix clauses 17, 18, Sch Pts 3, 4. 'Appointed member', in relation to the council, means a person appointed under Appendix clause 17; and 'elected member', in relation to the council, means a person elected under Appendix clause 16: Appendix clause 1(1). As to eligibility to serve as a member of council see Appendix clause 25. As to the filling of casual vacancies on the council see Appendix clause 21.

11 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 14(2). As to the functions of the council see PARA 985.

12 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 19(1). A person who has held office as an appointed member or as an elected member is eligible for appointment or re-appointment, or for election or re-election, as the case may be, to the council: Appendix clause 19(2).

13 As to the meaning of 'writing' see PARA 805 note 14.

14 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 20.

15 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 22(1)(a), (2), (3).

16 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 22(1)(b). The deputy chairman may exercise all the functions of the chairman at any meeting when the chairman is not present: Appendix clause 22(5).

17 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 22(1)(c). The functions referred to are those conferred by the scheme: see Appendix clause 22(1)(b). The senior member of the council must chair any part of any meeting of the council at which the council considers: (1) any proposal to remove a member of the Board of Trustees (Appendix clause 22(7)(a)); (2) any proposal to censure the Board of Trustees (Appendix clause 22(7)(b)); and (3) any other business the nature of which, in the opinion of a majority of members of the council present at the meeting, is such as to make it inappropriate for the chairman or the deputy chairman to chair the meeting while that business is being considered (Appendix clause 22(7)(c)).

18 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 22(4).

19 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 22(6).

20 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 23. As to the filling of casual vacancies in the office of chairman, deputy chairman or senior member of the council see Appendix clause 24.

21 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 26. As to membership of the trust see PARA 980.

22 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 30.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(i) Constitution/982. The Board of Trustees.

982. The Board of Trustees.

As from a day to be appointed the following provisions have effect¹.

The Board of Trustees has a minimum of nine and a maximum of 15 members, unless a resolution is passed by the Council of the National Trust² and by the Board of Trustees to change the minimum or maximum numbers, or both numbers³, and the commissioners⁴ give their approval in writing⁵ to such a change⁶. A majority of the members of the Board of Trustees must be members of the council⁷. All members of the Board of Trustees other than the chairman and the deputy chairman of the National Trust are appointed by the council in accordance with published procedures decided by the council⁸. Every member of the Board of Trustees is appointed for three years, and retiring members are eligible for re-appointment⁹. The chairman and deputy chairman of the National Trust act as chairman and deputy chairman of the Board of Trustees¹⁰. No person is eligible for appointment as a member of the Board of Trustees unless that person is a member of the National Trust¹¹. Provision is made for the payment of expenses and remuneration to the members of the Board of Trustees¹².

1 As to the provisions in respect of the coming into force of the scheme altering or affecting the trusts of the National Trust under the Charities (National Trust) Order 2005, SI 2005/712, see PARA 803 note 11.

2 As to the Council of the National Trust see PARA 981. As to the National Trust see PARA 979.

3 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 3(4)(a).

4 As to the meaning of 'commissioners' see PARA 803 note 11.

5 As to the meaning of 'writing' see PARA 805 note 14.

6 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 3(4)(b).

7 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 3(5). The chairman and deputy chairman of the National Trust are automatically members of the Board of Trustees: Appendix clause 3(6). As to the chairman and deputy chairman of the trust see PARA 981.

8 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 3(7). As to the induction of new members of the board see Appendix clause 4. A record of new members of the Board of Trustees must be kept: see Appendix clause 5. As to the termination of membership of the board see Appendix clause 6. As to the filling of casual vacancies on the board see Appendix clause 7.

9 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 3(8). The council must exercise its powers with the object of ensuring that, so far as is practicable, the terms of office of approximately one third of the members of the Board of Trustees expire every year: Appendix clause 3(9). The Council may, exceptionally, appoint a member of the Board of Trustees for a term of less than three years where this is necessary to achieve the object referred to in clause 3(9): Appendix clause 3(10).

10 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 8.

11 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 26. As to membership of the trust see PARA 980.

12 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 30.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(ii) Purposes, Powers and Proceedings/983. General purposes of the National Trust.

(ii) Purposes, Powers and Proceedings

983. General purposes of the National Trust.

The National Trust¹ was established for the purposes of promoting the permanent preservation for the benefit of the nation of land and tenements, including buildings, of beauty or historic interest and, as regards land, for the preservation (so far as practicable) of its natural aspect, features and animal and plant life². These purposes have since been extended so as to include the promotion of:

- 274 (1) the preservation of buildings of national interest or architectural, historic or artistic interest and places of natural interest or beauty and the protection and augmentation of the amenities of such buildings, places and their surroundings³;
- 275 (2) the preservation of furniture and pictures and chattels of any description having national or historic or artistic interest⁴; and
- 276 (3) the access to and enjoyment of such buildings, places and chattels by the public⁵.

The purposes of the trust have been held to be charitable⁶.

1 As to the National Trust see PARA 979.

2 National Trust Act 1907 s 4(1). As to the general powers of the National Trust over its property see s 4(2); and PARA 984.

3 National Trust Act 1937 s 3(a).

4 National Trust Act 1937 s 3(b).

5 National Trust Act 1937 s 3(c).

6 See *Re Verrall, National Trust for Places of Historic Interest or Natural Beauty v A-G* [1916] 1 Ch 100; and CHARITIES vol 8 (2010) PARA 37.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(ii) Purposes, Powers and Proceedings/984. General powers of the National Trust.

984. General powers of the National Trust.

The National Trust¹ may maintain and manage, either alone or jointly with other bodies or persons², open spaces or places of public resort and buildings for public recreation, resort or instruction, for the convenience of persons using them or resorting to them, and may, for the comfort and convenience of persons using or resorting to them, improve any property which belongs to it, or in which it has any interest, and may exercise full powers of ownership over such property³.

For the carrying into effect of its objects the trust may act in concert with and make arrangements and agreements with any local authority, or any residents or committee of residents in the neighbourhood of any property of the trust or with any other persons⁴. The trust may purchase any land or buildings or investments of the nature which it is authorised to hold⁵ for the purpose of providing by the resulting rents and profits or income a fund for the maintenance of any other specific property or for its general purposes⁶.

1 As to the National Trust see PARA 979.

2 See the National Trust Act 1907 s 31; and the text to note 4. As to the meaning of 'person' see PARA 803 note 16.

3 See National Trust Act 1907 s 4(2). The National Trust may be liable for failure to take reasonable care to prevent unnecessary danger to users of its property: see *Quinn v Scott* [1965] 2 All ER 588, [1965] 1 WLR 1004. See also the National Trust Act 1971 s 24(1); and PARA 988. As to the extension of the power of the National Trust to act as trustee see the National Trust Act 1939 s 13; and PARA 993.

4 National Trust Act 1907 s 31. As to the power of local authorities to contribute to the expenses of the trust see the National Trust Act 1937 s 7(2); and PARA 999.

5 Ie by the National Trust Act 1953 s 4 (see PARA 996): National Trust Act 1937 s 4(b) (amended by the National Trust Act 1953 s 4(4)).

6 See the National Trust Act 1937 s 4(a), (b).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(ii) Purposes, Powers and Proceedings/985. Powers and proceedings of the Council of the National Trust.

985. Powers and proceedings of the Council of the National Trust.

Until a day to be appointed the following provisions have effect¹.

The entire business of the National Trust² must be arranged and managed by its council³. The council may exercise all the powers of the trust except those which are exercisable only by a general meeting⁴. The council may appoint from its own number any committee for any special purpose and may add to any such committee for such length of time and with such powers of voting or otherwise as the council may think fit any member or other person whose aid it judges useful to forward the objects of the trust⁵.

There is an executive committee of the trust consisting of the chairman of each of the regional committees and other persons appointed by the council⁶. The executive committee may exercise all the powers conferred on the council except in regard to certain specified matters⁷ and any other power which the council expressly withdraws⁸. The executive committee may appoint sub-committees for special purposes⁹, and may make regulations as to its own procedure¹⁰. With the approval of the council the executive committee may delegate to regional committees such powers and duties as it thinks fit, and a regional committee may appoint local committees for special purposes¹¹.

The council must meet at least four times a year¹² and may make regulations as to its own procedure¹³, appoint officers and servants¹⁴, and exercise the powers of borrowing on mortgage conferred on the trust¹⁵. Vacancies in the council or committees, and defects in the qualification or election of members, do not invalidate acts or proceedings of the council, executive committee or any regional, local or other committee or sub-committee¹⁶. Any instrument which if made by a private person would be required to be under seal must be under the seal of the trust¹⁷.

As from a day to be appointed the following provisions have effect¹⁸.

As from the new constitution date¹⁹ all powers and duties conferred on the council by any provision of the National Trust Acts 1907 to 1971 for the time being in force become powers and duties of the Board of Trustees²⁰.

The council must appoint the members of the Board of Trustees and hold them to account²¹. The council's responsibilities include:

- 277 (1) monitoring the fulfilment by the National Trust of its statutory purposes²²;
- 278 (2) appointing the chairman and deputy chairman of the trust²³;
- 279 (3) appointing and, if necessary, removing members of the Board of Trustees in accordance with the 2005 scheme²⁴;
- 280 (4) monitoring the performance of, and calling to account, the Board of Trustees in its control and management of the administration of the trust²⁵;
- 281 (5) arranging the procedures for election of members of the council²⁶;
- 282 (6) reviewing every six years the list of appointing bodies²⁷;
- 283 (7) making available annually to the members of the trust a report on the activities of the council²⁸;
- 284 (8) commenting on proposals from the Board of Trustees for the alteration of the National Trust Acts 1907 to 1971 or byelaws or of the 2005 scheme or any other scheme of the Charity Commission relating to the trust²⁹.

The council must whenever the involvement of a nominations committee is provided for³⁰ in relation to the election of members to it³¹, and whenever the council is to make an appointment to the Board of Trustees or is to appoint the chairman or deputy chairman of the trust³², appoint a nominations committee to assist the council (and, in the case of elections to the council, the members of the trust)³³. The council by resolution³⁴ may establish a committee of inquiry to investigate any aspect of the affairs of the trust³⁵. The committee of inquiry must report back to the council and the council must then decide what action, if any, to take³⁶.

The Board of Trustees may from time to time make regulations for the conduct of the business of the council and any committee³⁷. The acts and proceedings of the council or of any committee are not invalidated by any vacancy in its number or any defect or irregularity in its constitution³⁸.

1 As from a day to be appointed the National Trust Act 1971 ss 11-19, Sch 3 are repealed by the Charities (National Trust) Order 2005, SI 2005/712, art 2, Appendix clause 2(3), Schedule Pt 2. At the date at which this volume states the law no such day had been appointed.

2 As to the National Trust see PARA 979.

3 National Trust Act 1971 s 11(1). No regulation made or resolution passed by the trust in general meeting invalidates any prior act of the council which would have been valid if that regulation or resolution had not been made or passed: s 11(1). As to the Council of the National Trust see PARA 981. As to general meetings see PARA 989.

4 National Trust Act 1971 s 11(1).

5 National Trust Act 1971 s 11(5).

6 See the National Trust Act 1971 s 12(1). As to the membership of the executive committee and tenure of office see further ss 12(1), (2), 16. As to vacation of office due to failure to attend meetings see s 17. Members of committees and sub-committees may have their expenses as members defrayed by the trust: see s 19.

7 The matters in respect of which the executive committee is not to exercise powers conferred on the council are as follows:

5 (1) the general policy of the National Trust including (a) the principles on which properties should be acquired; (b) the principles governing access to properties by the public; (c) the standard of the amenities to be provided at properties; (d) the standards of restoration, modernisation and upkeep of properties (National Trust Act 1971 Sch 3 para 1);

6 (2) the appointment of members of the executive committee (Sch 3 para 2);

7 (3) the remuneration of any office holders (Sch 3 para 3);

8 (4) regional boundaries (Sch 3 para 4);

9 (5) the delegation of powers to regional committees (Sch 3 para 5);

10 (6) the appointment of chairmen of regional committees (Sch 3 para 6);

11 (7) proposals for the alteration of the National Trust Acts and byelaws (Sch 3 para 7);

12 (8) the periodic review of the bodies and persons entitled to appoint members of the council in accordance with s 8 (see PARA 981) (Sch 3 para 8);

13 (9) approval of the annual budget of the trust (Sch 3 para 9);

14 (10) approval of the annual accounts of the trust (Sch 3 para 10);

15 (11) the form and content of the annual report (Sch 3 para 11);

16 (12) arrangements for the general meetings of the trust (Sch 3 para 12);

17 (13) examination of the quarterly reports of the executive committee (Sch 3 para 13).

8 National Trust Act 1971 s 12(4). The council may impose such conditions and limitations as it thinks fit as to the exercise of any powers conferred on the committee under these provisions: s 12(4) proviso. The chairman and deputy chairman of the trust are ex officio chairman and deputy chairman of the executive committee unless the council otherwise determines, in which case the committee must elect its own chairman and deputy chairman from its own members: s 12(3). As to the remuneration of the chairman of the executive committee see s 18(1). As to the chairman and deputy chairman of the trust see PARA 981.

9 See the National Trust Act 1971 s 12(5). This power is similar in all respects to the power conferred on the council by s 11(5) (see the text to note 5): s 12(5). As to the remuneration of the chairman of a sub-committee see s 18(2), (3).

10 See the National Trust Act 1971 s 12(6). However, no regulations may contravene the provisions of the Act: s 12(6) proviso.

11 See the National Trust Act 1971 s 13. As to the remuneration of the chairman of a regional committee see s 18(1).

12 National Trust Act 1971 s 11(6). As to the keeping of minutes of any meeting of the council or committees and of the general meetings of the trust, and the keeping of a register of members see s 14(3), (4).

13 See the National Trust Act 1971 s 11(2). However, the regulations must not contravene the provisions of the National Trust Acts 1907 to 1971: National Trust Act 1971 s 11(2) proviso. As to the National Trust Acts 1907 to 1971 see PARA 979 note 6.

14 See the National Trust Act 1971 s 11(3).

15 See the National Trust Act 1971 s 11(4). As to such powers see PARA 997.

16 See the National Trust Act 1971 s 14(1), (2).

17 National Trust Act 1971 s 15(1). Subject to this, any notice, consent, approval or other document issued by or on behalf of the trust is deemed to be duly executed if signed by the chairman, deputy chairman or secretary; but any appointment, contract, order or other document made by or proceeding from the trust is deemed to be duly executed either if sealed with the seal of the trust or signed by two or more members of the council authorised to sign by a resolution of the council or the executive committee but it is not necessary in any legal proceedings to prove that the members signing any such contract, order or other document were authorised to sign and such authority is to be presumed until the contrary is proved: s 15(2). As to documents required to be under seal see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 32.

18 As to the provisions in respect of the coming into force of the scheme altering or affecting the trusts of the National Trust under the Charities (National Trust) Order 2005, SI 2005/712, see PARA 803 note 11.

19 As to the meaning of 'new constitution date' see PARA 803 note 11.

20 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 2(4). As to the Board of Trustees see PARA 982. As to the powers of the board see PARA 986.

21 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 15(1).

22 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 15(2)(a).

23 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 15(2)(b).

24 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 15(2)(c). The 2005 scheme is the scheme altering or affecting the trusts of the National Trust under the Charities (National Trust) Order 2005, SI 2005/712: see PARA 979.

25 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 15(2)(d).

26 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 15(2)(e). As to the election of members of the council see PARA 981.

27 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 15(2)(f). As to the appointing bodies see PARA 981.

28 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 15(2)(g). As to membership of the trust see PARA 980.

29 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 15(2)(h). As to byelaws see PARA 988. As to the power of the Charity Commission to make schemes see the Charities Act 1993 s 17; and **CHARITIES** vol 8 (2010) PARA 191.

30 See under the Charities (National Trust) Order 2005, SI 2005/712, Appendix clauses 16 or 18: see PARA 981.

31 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 27(1)(a).

32 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 27(1)(b).

33 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 27(1). The size and criteria for membership of each nominations committee must be determined by resolution of the council provided that at least one member of each nominations committee must be a person who is external to the trust: Appendix clause 27(2). A person is external to the trust if that person: (1) is not a member of the Board of Trustees, the council, any country or regional committee, or any advisory panel; (2) has not been a member of any such body within the previous three years; (3) is not, and has not been within the previous three years, an employee of the trust; and (4) is not the spouse, parent or child of a person falling within any of heads (1), (2) or (3) above: Appendix clause 1(2). For these purposes (a) 'child' includes a stepchild and an illegitimate child; (b) a person living with another as that person's husband, wife or long term partner is treated as that person's spouse; and (c) the fact that a person is a member of the trust does not preclude that person from being external to the trust: Appendix clause 1(3). As to country and regional committees and advisory panels see PARA 987.

34 A resolution to establish a committee of inquiry is not valid unless supported by at least two-thirds of the members of the council present at the meeting at which the resolution is considered: Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 28(5).

35 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 28(1). The composition, procedures and terms of reference of a committee of inquiry so established must be specified in the resolution by which the committee is established: Appendix clause 28(2). A committee of inquiry has all necessary powers of calling for documents, assistance and evidence from the Board of Trustees and from the staff of the trust: Appendix clause 28(3).

36 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 28(4).

37 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 43; and PARA 990.

38 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 29; and PARA 990.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(ii) Purposes, Powers and Proceedings/986. Powers of the Board of Trustees.

986. Powers of the Board of Trustees.

As from a day to be appointed the following provisions have effect¹.

As from the new constitution date² all powers and duties conferred on the Council of the National Trust³ by any provision of the National Trust Acts 1907 to 1971⁴ for the time being in force become powers and duties of the Board of Trustees⁵.

The members of the Board of Trustees are the trustees of the National Trust⁶. The Board of Trustees must exercise all powers conferred on the trust by the National Trust Acts 1907 to 1971 and the 2005 scheme⁷, except those, which in accordance with any provision of the scheme, are exercisable only by the trust in general meetings⁸ or are exercisable only by the council⁹.

Except as otherwise provided¹⁰, the members of the Board of Trustees must exercise their powers jointly, at meetings convened in accordance with the 2005 scheme¹¹.

The Board of Trustees may from time to time amend the 2005 scheme if it is satisfied that it is expedient in the interests of the National Trust to do so¹², but must consult the council before making any such amendment¹³. The Board of Trustees must not make any amendment which would have the effect directly or indirectly of: (1) altering or extending the purposes of the trust¹⁴; (2) authorising the Board of Trustees to do anything which is expressly prohibited by the trusts of the trust¹⁵; (3) causing the trust to cease to be a charity at law¹⁶; or (4) altering or extending this power of amendment¹⁷. The Board of Trustees must obtain the prior written¹⁸ approval of the commissioners¹⁹ before making any amendment which would have the effect directly or indirectly of:

- 285 (a) enabling them to spend permanent endowment or capitalise income of the trust²⁰;
- 286 (b) conferring a benefit of any kind on all or any of the current members of the Board of Trustees or their successors²¹;
- 287 (c) restricting (without the consent of that person²²) the existing right of any person to appoint or remove a member of the Board of Trustees, or to intervene in the administration of the trust²³;
- 288 (d) changing provisions in the 2005 scheme as to the size of the council or the minimum or maximum size of the Board of Trustees, or changing the method by which members of those bodies are elected or appointed²⁴; or
- 289 (e) varying the name of the trust²⁵.

An amendment may be made only by a resolution passed at a meeting of the Board of Trustees of which not less than 21 days' notice has been given²⁶. The Board of Trustees must: (i) prepare a written memorandum of each amendment that it makes, which must be signed at the meeting at which the amendment is made by the person chairing the meeting²⁷; (ii) send to the commissioners a copy of the memorandum certified by a person authorised by the board to do so within three months²⁸ of the date of the meeting²⁹; and (iii) retain the memorandum as part of the governing documents³⁰.

The Board of Trustees may appoint employees of the trust and fix their remuneration and conditions of employment³¹, and may delegate any of its functions to any such employee³².

Employees must report to the Board of Trustees in accordance with any instructions given by the board³³.

- 1 As to the provisions in respect of the coming into force of the scheme altering or affecting the trusts of the National Trust under the Charities (National Trust) Order 2005, SI 2005/712, see PARA 803 note 11.
- 2 As to the meaning of 'new constitution date' see PARA 803 note 11.
- 3 As to the Council of the National Trust see PARA 981. As to the powers and proceedings of the council see PARA 985.
- 4 As to the National Trust Acts 1907 to 1971 see PARA 979 note 6.
- 5 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 2(4). As to the Board of Trustees see PARA 982.
- 6 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 3(1). As to the National Trust see PARA 979.
- 7 If the scheme altering or affecting the trusts of the National Trust under the Charities (National Trust) Order 2005, SI 2005/712.
- 8 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 3(2)(a). As to general meetings see PARA 989.
- 9 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 3(2)(b).
- 10 If except as otherwise provided by the Charities (National Trust) Order 2005, SI 2005/712, Appendix clauses 10(3), 12(3) (see PARA 987) and 13(2) (see the text to note 32).
- 11 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 3(3).
- 12 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(1).
- 13 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(2). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.
- 14 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(3)(a).
- 15 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(3)(b).
- 16 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(3)(c). As to the holding of the purposes of the trust to be charitable see PARA 983.
- 17 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(3)(d). The power of amendment is that conferred by Appendix clause 45: Appendix clause 45(3)(d).
- 18 As to the meaning of 'written' see PARA 805 note 14.
- 19 As to the meaning of 'commissioners' see PARA 803 note 11. As to the power of the commissioners to decide any question put to them concerning the interpretation of the 2005 scheme, or the propriety or validity of anything done or intended to be done under it, see PARA 803 note 11.
- 20 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(4)(a).
- 21 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(4)(b).
- 22 As to the meaning of 'person' see PARA 803 note 16.
- 23 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(4)(c).
- 24 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(4)(d).
- 25 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(4)(e).
- 26 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(5). The notice must set out the terms of the proposed amendment: Appendix clause 45(5).

- 27 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(6)(a).
- 28 As to the meaning of 'month' see PARA 803 note 11.
- 29 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(6)(b).
- 30 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 45(6)(c).
- 31 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 13(1).
- 32 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 13(2).
- 33 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 13(3).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(ii) Purposes, Powers and Proceedings/987. Proceedings of the Board of Trustees.

987. Proceedings of the Board of Trustees.

As from a day to be appointed the following provisions have effect¹.

The Board of Trustees² must make provision for its meetings³. Unless otherwise expressly provided in the 2005 scheme⁴, every matter must, in case of difference, be decided by a majority of the members of the Board of Trustees present and voting at a duly convened meeting of the Board of Trustees⁵. However, a decision supported by all members of the Board of Trustees and taken otherwise than at a meeting is as valid as if it had been made at a meeting of the Board of Trustees⁶, provided that it is recorded in writing⁷ in a single document signed by all members of the Board of Trustees, or else in two or more similar documents which together bear the signatures of all members of the Board of Trustees⁸. The Board of Trustees must keep a proper record of its meetings⁹.

The Board of Trustees may from time to time establish and dissolve committees including country and regional committees and advisory panels¹⁰, and may delegate any of its functions to any committee so established¹¹. A committee established under these provisions must report to the Board of Trustees in accordance with any instructions given¹² by the Board of Trustees¹³ and must keep a proper record of its proceedings¹⁴.

The acts and proceedings of the Board of Trustees or of any committee, sub-committee or advisory panel are not invalidated by any vacancy in its number or any defect or irregularity in its appointment¹⁵.

1 As to the provisions in respect of the coming into force of the scheme altering or affecting the trusts of the National Trust under the Charities (National Trust) Order 2005, SI 2005/712, see PARA 803 note 11.

2 As to the Board of Trustees see PARA 982.

3 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 9(1). Such arrangements are to be made in accordance with Appendix clause 43 (see PARA 990): see Appendix clause 9(1). The quorum for meetings of the Board of Trustees must be half of the members for the time being of the Board of Trustees, rounded up when there is an odd number of members of the Board of Trustees, or six members of the Board of Trustees, whichever is the greater: Appendix clause 9(2).

4 Ie the scheme altering or affecting the trusts of the National Trust under the Charities (National Trust) Order 2005, SI 2005/712: see PARA 979.

5 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 10(1). The chairman of the meeting may cast a second or casting vote only if there is a tied vote: Appendix clause 10(2).

6 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 10(3).

7 As to the meaning of 'writing' see PARA 805 note 14.

8 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 10(4).

9 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 11.

10 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 12(1). Except for country and regional committees and advisory panels, a committee established must include at least one person who is a member of the Board of Trustees and may include persons who are not members of the Board of Trustees: Appendix clause 12(2).

11 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 12(3).

- 12 le under the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 43: see PARA 990.
- 13 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 12(4).
- 14 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 12(5).
- 15 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 29; and PARA 990.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(ii) Purposes, Powers and Proceedings/988. Byelaws.

988. Byelaws.

The National Trust¹ may make byelaws for the regulation and protection of, and for the prevention and suppression of nuisances and the preservation of order upon, and regulation of the conduct and securing the safety of any person² resorting to, any land or property held by it for the benefit of the nation³. In particular, and without prejudice to the generality of those purposes, the trust may make byelaws for certain specified purposes⁴. As regards buildings open to the public, whether on payment⁵ or not, or whether generally or at specified times or for specified periods only, the trust may make byelaws for certain purposes⁶ as if it were a library authority⁷. The provisions of the Local Government Act 1972 as to the procedure for making and confirming, and the enforcement and evidence of, byelaws⁸ apply to such byelaws made by the trust as if it were a local authority and its secretary were the clerk to that local authority⁹. Copies of byelaws must be exhibited by the trust on its property in such way as the trust thinks best calculated to give information to persons resorting to it¹⁰.

1 As to the National Trust see PARA 979.

2 As to the meaning of 'person' see PARA 803 note 16.

3 National Trust Act 1971 s 24(1). For these purposes, any property in which the trust is entitled to a leasehold interest in possession is deemed to be property of the trust held for the benefit of the nation: s 24(5).

4 National Trust Act 1971 s 24(1). The specified purposes are:

- 18 (1) prohibiting any person without lawful authority from digging, cutting or taking turves, sods, gravel, stone, clay or other substance on or from such lands or property and from cutting, felling or injuring any gorse, heather, timber or other tree, shrub, brushwood or other plant growing there (s 24(1)(a));
- 19 (2) prohibiting or regulating the lighting of fires (s 24(1)(b));
- 20 (3) prohibiting or regulating the firing or discharge of firearms or the throwing or discharge of missiles on such lands or property without lawful authority (s 24(1)(c));
- 21 (4) prohibiting the deposit on such lands or property or in any pond on such lands or property of road-sand, materials for repair of roads or wood or any dung, rubbish or other offensive matter (s 24(1)(d));
- 22 (5) prohibiting the injury, defacement or removal of any building, structure or other thing on such lands or property or of seats, fences, notice boards or other things put up or maintained by the trust (s 24(1)(e));
- 23 (6) prohibiting or regulating the posting or painting of bills, placards, advertisements or notices on trees or fences or notice boards on such lands or property (s 24(1)(f));
- 24 (7) prohibiting any person without lawful authority from bird catching, setting traps or nets or liming trees or laying snares for birds or other animals, taking birds' eggs or nests and shooting, driving or chasing game or other animals on such lands or property (s 24(1)(g));
- 25 (8) prohibiting or regulating the use without lawful authority of vehicles, and the erection without the consent of the trust of any buildings or other structure, and authorising an officer of the trust to remove any vehicle or structure in contravention of the byelaws and prescribing any roads other than public roads on which motor cars and cycles may be used (s 24(1)(h));

- 26 (9) prohibiting or regulating the placing on such lands or property of any show, exhibition, swing, roundabout or other like thing and authorising an officer of the trust to remove any thing placed on such lands or property in contravention of the byelaws (s 24(1)(i));
- 27 (10) regulating games and recreations and assemblages of persons on such lands or property (s 24(1)(j));
- 28 (11) regulating the use of any land or property temporarily closed or set apart for any purpose (s 24(1)(k));
- 29 (12) prohibiting or regulating the exercise or breaking in of horses on such lands without lawful authority (s 24(1)(l));
- 30 (13) prohibiting any person without lawful authority from turning out or permitting to remain on such lands any cattle, sheep or other animals and authorising an officer of the trust to remove such animals in contravention of the byelaws or suffering from disease (s 24(1)(m));
- 31 (14) generally prohibiting any act or thing tending to injure or disfigure such trust lands or property or to interfere with public enjoyment and use of it (s 24(1)(n));
- 32 (15) authorising an officer of the trust after due warning to remove or exclude from such lands or property any person who in his view commits an offence against the byelaws (s 24(1)(o));
- 33 (16) prohibiting the hindrance or obstruction of an officer of the National Trust in the exercise of his powers or duties under the National Trust Act 1971 or any byelaws made under it (s 24(1)(p));
- 34 (17) permitting the public or specified persons to view and make copies or reproductions of or extracts from any chattel vested in the trust on terms prescribed by the Council of the National Trust (s 24(1)(q));
- 35 (18) regulating the speed of vehicles on any road on such lands or property other than a road within the meaning of the Road Traffic Act 1960 s 257(1) (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 206) (National Trust Act 1971 s 24(1)(r));
- 36 (19) prohibiting or regulating sailing, boating, bathing, fishing and other forms of recreation on any waterway forming part of such lands or property (s 24(1)(s)).

'Officer of the trust' includes a voluntary worker as well as a paid officer; and 'waterway' means any lake, river, canal or other waters: see s 24(2). As to the council see PARA 981. As from a day to be appointed the powers and duties conferred on the council by any provision of the National Trust Acts 1907 to 1971 become powers and duties of the Board of Trustees: see PARA 986.

All byelaws made by the trust under the National Trust Act 1907 s 32 (repealed), and in force immediately prior to the passing of the National Trust Act 1971 (ie 17 February 1971), continue to have effect until revoked by the trust: s 24(3). Byelaws made under these provisions do not affect the powers of certain water authorities (see s 24(6)) nor do they empower the trust to make any byelaw prohibiting or interfering with rights of navigation in any tidal waters or in any waterway which is not tidal water (s 24(7)). As to rights of navigation see **WATER AND WATERWAYS** vol 101 (2009) PARA 688 et seq.

5 As to the power to charge for admission see PARA 991.

6 Ie for the purposes specified in the Public Libraries Act 1901 s 3 (repealed) (see the Public Libraries and Museums Act 1964 s 26(5); and PARA 934): National Trust Act 1907 s 33.

7 National Trust Act 1907 s 33; National Trust Act 1937 s 11(2). The provisions of the Libraries Offences Act 1898 s 2 (see PARA 904) apply to any such building: National Trust Act 1907 s 33. As to the meaning of 'library authority' see PARA 926.

8 Ie the Local Government Act 1972 ss 236-238 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 556 et seq): see the National Trust Act 1937 s 12(1) (amended by the National Trust Act 1971 s 24(4)); Local Government Act 1972 s 272. The confirming authority for this purpose is the Secretary of State or, in relation to Wales, the Welsh Ministers: see the National Trust Act 1937 s 12(1); National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 Sch 11 para 30. As to the Secretary of State and the transfer of functions to the Welsh Ministers see PARA 802.

9 National Trust Act 1937 s 12(1).

10 National Trust Act 1907 s 34.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(ii) Purposes, Powers and Proceedings/989. General meetings.

989. General meetings.

Until a day to be appointed the following provisions have effect¹.

General meetings of the National Trust² must be held at least once in every year and must be called and held in accordance with the statutory regulations³. Such regulations may be altered or added to by a resolution of the council⁴, passed by a majority of not less than two-thirds of the members of the council present⁵ and approved at the next annual general meeting⁶.

As from a day to be appointed the following provisions have effect⁷.

There are two types of general meeting of the trust, annual general meetings⁸ and extraordinary general meetings⁹. Notice of every general meeting, and the agenda, must be sent to the members not less than 21 days before the meeting¹⁰. Provision is made as to the quorum of general meetings¹¹, the chairman of meetings¹², and the adjournment¹³ of and voting¹⁴ at meetings.

At each annual general meeting the Board of Trustees must present to the meeting a report of the activities of the trust in the preceding financial year and the accounts of the trust for that year¹⁵.

The Board of Trustees may convene an extraordinary general meeting whenever it thinks fit¹⁶. The Board of Trustees must within 28 days of receiving a valid requisition to do so send out a notice to convene an extraordinary general meeting¹⁷; and if the Board of Trustees does not, within 28 days of receiving a valid requisition, send out a notice to convene an extraordinary general meeting, the requisitionists may convene an extraordinary general meeting¹⁸. The only business which may be dealt with at an extraordinary general meeting is business of which notice has been given in the notice convening the meeting¹⁹.

Except where otherwise provided²⁰ any direction or decision by the chairman of a general meeting as to the conduct of the meeting, or on any question of procedure or point of order, is final²¹. The Board of Trustees by resolution and the members of the trust by resolution in general meeting may from time to time agree to replace these provisions²² relating to general meetings with new or amended provisions²³.

1 As from a day to be appointed the National Trust Act 1971 s 5 is repealed by the Charities (National Trust) Order 2005, SI 2005/712, art 2, Appendix clause 2(3), Schedule Pt 2. At the date at which this volume states the law no such day had been appointed.

2 As to the National Trust see PARA 979. As to membership of the trust see PARA 980.

3 National Trust Act 1971 s 5(1). The statutory regulations are those contained in Sch 2: s 5(1). The annual general meeting is called the ordinary meeting and all other general meetings are called extraordinary meetings: Sch 2 para 1. At ordinary meetings the council must lay before the meeting a report and accounts relating to the year: see Sch 2 para 2 (substituted by the National Trust at its annual general meeting in 1985). As to the convening of extraordinary meetings see Sch 2 para 3; and as to the date when ordinary meetings are to be held see Sch 2 para 4. As to notice of general meetings and of business and resolutions see Sch 2 paras 5-10 (para 7 amended by the National Trust at its annual general meeting of 1976). As to quorum see Sch 2 para 11. As to business which may be transacted without a quorum see Sch 2 para 12. As to voting see Sch 2 paras 13-16 (para 15 amended in 1983). As to chairmanship of the meeting and the adjournment of business see Sch 2 para 17.

4 National Trust Act 1971 s 5(2). The resolution must be passed at a meeting of the council of which not less than 21 days' notice has been given setting out the resolution to be proposed: s 5(3)(a). As to the Council of the National Trust see PARA 981.

5 National Trust Act 1971 s 5(3)(b).

6 National Trust Act 1971 s 5(3)(c).

7 As to the provisions in respect of the coming into force of the scheme altering or affecting the trusts of the National Trust under the Charities (National Trust) Order 2005, SI 2005/712, see PARA 803 note 11.

8 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 31(a). The annual general meeting must be held on such date between 1 September and 31 December each year, at such time and in such place as the Board of Trustees decides: Appendix clause 33(1). The only business which may be dealt with at an annual general meeting is: (1) business which in accordance with the National Trust Acts 1907 to 1971 and the 2005 scheme is required or authorised to be dealt with at annual general meetings (Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 33(2)(a)); (2) a resolution proposed by members (a 'members' resolution'), and notice of which is given in the notice of the meeting (see Appendix clause 33(2)(b)); and (3) a resolution proposed by the Board of Trustees, and notice of which is given in the notice of the meeting (Appendix clause 33(2)(c)). As to the National Trust Acts 1907 to 1971 see PARA 979 note 6. The '2005 scheme' is the scheme altering or affecting the trusts of the National Trust under the Charities (National Trust) Order 2005, SI 2005/712: see PARA 979. As to the Board of Trustees see PARA 982. As to members' resolutions see Appendix clause 35.

9 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 31(b).

10 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 32(1). The notice must be in such form and must be sent in such manner as the Board of Trustees from time to time decides: Appendix clause 32(2). As to the service of documents generally see PARA 990.

11 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 37.

12 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 38.

13 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 39.

14 See the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 40.

15 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 34(1). Copies of the report and accounts must be available at each annual general meeting and on written application to the secretary of the trust: Appendix clause 34(2). As to the meaning of 'written' see PARA 805 note 14. As to the keeping of accounts see PARA 998.

16 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 36(1).

17 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 36(2). As to the validity of requisitions see Appendix clause 36(3), (4).

18 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 36(5).

19 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 36(6).

20 Ie except where the Charities (National Trust) Order 2005, SI 2005/712, provides otherwise.

21 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 41.

22 Ie the provisions set out in the Charities (National Trust) Order 2005, SI 2005/712.

23 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 42.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(ii) Purposes, Powers and Proceedings/990. Validity and regulation of procedures; documents and notices.

990. Validity and regulation of procedures; documents and notices.

As from a day to be appointed the following provisions have effect¹.

The acts and proceedings of the Board of Trustees², the council³, or of any committee, sub-committee or advisory panel are not invalidated by: (1) any vacancy in their number⁴; (2) any defect or irregularity in the appointment, or in the qualification for appointment, of any person as a member, chairman, or deputy chairman of any of those bodies, or as chairman or deputy chairman of the National Trust or as senior member of the council⁵; or (3) (in the case of elected members⁶) any defect or irregularity in the election, or in the qualification for election, of the member⁷.

The Board of Trustees may from time to time make regulations⁸ for the management and administration of the National Trust, the holding of meetings and the conduct of the business of the trust and of the Board of Trustees, the council and any committee, sub-committee or advisory panel⁹. Subject to the National Trust Acts 1907 to 1971¹⁰ and the 2005 scheme¹¹, and to any such regulations, the Board of Trustees, the council and any committee, sub-committee or advisory panel each has power to regulate its own procedures¹².

Regulations made under the above provisions¹³ may lay down procedures for the sealing, signature or execution on behalf of the trust of documents of any kind¹⁴. It is not necessary in legal proceedings to prove that the person or persons who sealed, signed or executed any such document was or were duly authorised to do so, and such document must be presumed to be duly signed, sealed or executed unless the contrary is proved¹⁵.

In relation to any notice or document which the trust is required by the National Trust Acts 1907 to 1971 or the 2005 scheme to send to any person¹⁶:

- 290 (a) where the trust sends a notice or document to one member of a joint, group, or family membership of the trust¹⁷, the trust is not required to send separate notices or documents to the other members of that joint, group or family membership¹⁸;
- 291 (b) the trust is not required to send notices or documents to members of the trust who enjoy a concessionary membership rate by reason of their living at the same address as another member of the trust¹⁹;
- 292 (c) the fact that a notice or document is not sent to or received by any person entitled to receive it does not invalidate any meeting held or action taken in accordance with the 2005 scheme²⁰.

1 As to the provisions in respect of the coming into force of the scheme altering or affecting the trusts of the National Trust under the Charities (National Trust) Order 2005, SI 2005/712, see PARA 803 note 11.

2 As to the Board of Trustees see PARA 982. As to the powers of the board see PARA 986; and as to the proceedings of the board see PARA 987.

3 As to the Council of the National Trust see PARA 981. As to the powers and proceedings of the council see PARA 985.

4 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 29(a).

5 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 29(b). As to the chairman and deputy chairman of the National Trust and the senior member of the council see PARA 981. As to the National Trust see PARA 979.

6 As to the meaning of 'elected member' see PARA 981 note 10.

7 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 29(c).

8 'Regulations' includes rules, standing orders and instructions: Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 43(4).

9 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 43(1). Without prejudice to the generality of clause 43(1) regulations made under that clause may specify the quorum for the council or for any committee, sub-committee or advisory panel: Appendix clause 43(2).

10 As to the National Trust Acts 1907 to 1971 see PARA 979 note 6.

11 The '2005 scheme' is the scheme altering or affecting the trusts of the National Trust under the Charities (National Trust) Order 2005, SI 2005/712: see PARA 979.

12 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 43(3).

13 ie regulations made under the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 43: see the text to notes 8-12.

14 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 44(1). Such regulations may lay down different procedures for different kinds of documents, and may specify the person or persons, being members of the Board of Trustees or staff of the trust, who may seal, sign or execute documents of the kinds specified in the regulations: Appendix clause 44(2).

15 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 44(3).

16 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 47(1). As to the meaning of 'person' see PARA 803 note 16.

17 As to membership of the trust see PARA 980.

18 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 47(2).

19 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 47(3).

20 Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 47(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(iii) Property/991. Powers of ownership.

(iii) Property

991. Powers of ownership.

The National Trust¹, either alone or jointly with other bodies or persons², may acquire by purchase (other than compulsorily), gift or otherwise, land, buildings and hereditaments and any interests in them and any other property of whatsoever nature and may act as a trustee of any property devoted to public purposes³. It may also acquire and retain any land, buildings and hereditaments which in the council's⁴ opinion it is desirable to hold as investments⁵. Certain property vested in the trust⁶ is not chargeable with any debts and liabilities and is inalienable⁷. The council may also by resolution determine that any other land and tenements, including buildings, which may at any time become vested in the trust are proper to be held for the benefit of the nation and such land and buildings then become inalienable⁸. Certain statutory powers, including that of compulsory acquisition, are not exercisable in respect of land held by the trust inalienably⁹.

The trust may make such reasonable charges for the admission of the public to any of its property or for the use by the public of such property as it may from time to time determine¹⁰. However, the trust must not make any admission charges to any common or commonable land or any other property of the trust to which the public had right of access at the date when such property was acquired by the trust, except such parts of common or commonable land as may be from time to time set apart¹¹ for games, meetings or athletic sports¹². The trust may also make such reasonable charges as it may from time to time determine in respect of recreation on any of its land or property or waterways¹³.

With the consent of the Secretary of State¹⁴ or, in relation to Wales, the Welsh Ministers¹⁵, and any other government department or authority whose consent would be required if the intended transaction were a sale by deed, a local authority may assure to the trust any land or building vested in it which the trust has power to acquire and hold¹⁶.

As from a day to be appointed the powers and duties conferred on the council by the above provisions become powers and duties of the Board of Trustees¹⁷.

1 As to the National Trust see PARA 979.

2 See the National Trust Act 1907 s 31; and PARA 984. As to the meaning of 'person' see PARA 803 note 16.

3 See the National Trust Act 1907 s 4(2). Section 4(2) also made special provision concerning the law of mortmain, which is repealed: see **CHARITIES** vol 8 (2010) PARAS 82-83. Special powers of management are given to the trust in relation to the Wey Navigation and Godalming Navigation: see the National Trust Act 1971 Pt IV (ss 29-31).

4 As to the Council of the National Trust see PARA 981. As to the powers and proceedings of the council see PARA 985.

5 See the National Trust Act 1937 s 4(a).

6 Ie the properties specified in the National Trust Act 1907 Sch 1 Pt I.

7 See the National Trust Act 1907 s 21(1).

8 National Trust Act 1907 s 21(2). In addition to properties made inalienable by s 21, any mansion house or amenity land assured to the trust under the National Trust Act 1939 (see PARA 993) is inalienable: s 8. 'Assurance' includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge,

incumbrance, devise, bequest and every other assurance by deed, will or other instrument; and 'assure' and 'assuror' have corresponding meanings: Mortmain and Charitable Uses Act 1888 s 10 (repealed); applied by the National Trust Act 1937 s 2. The trust may nevertheless grant leases of its inalienable property with the sanction of the Charity Commission: see the National Trust Charity Scheme Confirmation Act 1919 s 1, Schedule (s 1 amended by the Charities Act 2006 s 75(1), Sch 8 paras 16, 17; National Trust Charity Scheme Confirmation Act 1919 Schedule amended by the National Trust Act 1937 s 13, Charities Act 2006 s 75(1), Sch 8 paras 16, 18). As to leases of charity land generally see **CHARITIES** vol 8 (2010) PARA 395 et seq. The trust may also grant an easement or right (not including a right to the exclusive possession of the surface) over or in respect of its inalienable property, and if such grant is by way of lease, the sanction of the Charity Commission is not required: National Trust Act 1939 s 12 (amended by virtue of the Charities Act 2006 s 6(5)). As to the Charity Commission see **CHARITIES** vol 8 (2010) PARA 538 et seq.

9 As to compulsory acquisition see PARA 995. The Law of Property Act 1925 s 84 (which gives power to modify or discharge restrictive covenants: see **EQUITY** vol 16(2) (Reissue) PARA 630 et seq) does not apply to restrictions imposed for the purpose of preserving, or protecting or augmenting the amenities of, or securing the access to and enjoyment by the public of any property which is or becomes inalienable under the National Trust Act 1907 s 21 (see the text to notes 7-8), or the National Trust Act 1939 s 8 (see note 8): National Trust Act 1971 s 27. The right of tenants of certain properties to acquire the freehold which is given by the Leasehold Reform Act 1967 (see **LANDLORD AND TENANT** vol 27(3) (2006 Reissue) PARA 1389 et seq) does not extend to property if an interest in the property is vested inalienably in the trust: see s 32.

10 National Trust Act 1907 s 30(1).

11 Ie under the National Trust Act 1907 s 29(1)(F): see PARA 992.

12 National Trust Act 1907 s 30(2).

13 Ie including any land or property or waterway of the trust in respect of the playing of games, sailing, boating, bathing, fishing and other forms of recreation thereon: National Trust Act 1907 s 30(3) (s 30(3)-(5) added by the National Trust Act 1971 s 25). This provision does not empower the trust to make any charge in respect of navigation in tidal waters: National Trust Act 1907 s 30(5) (as so added). 'Waterway' means any lake, river, canal or other waters: s 30(4) (as so added). As to rights of navigation see **WATER AND WATERWAYS** vol 101 (2009) PARA 688 et seq.

14 The National Trust Act 1937 s 7(1) refers to the Minister of Health, whose functions have been transferred to the Secretary of State: see PARA 802 note 2.

15 As to the transfer of functions to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

16 See the National Trust Act 1937 s 7(1). As to contributions to the trust by local authorities see PARA 999.

17 See PARA 986.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(iii) Property/992. Commons vested in the National Trust.

992. Commons vested in the National Trust.

The National Trust¹ must keep any land registered as common land², and certain other land³, vested in it uninclosed and unbuilt on as open spaces for the recreation and enjoyment of the public⁴; and must prevent, resist and abate, by all lawful means, all inclosures and encroachments on the property or attempts to do so or to appropriate the soil, timber or roads for any purpose inconsistent with the National Trust Act 1907⁵. The trust also has the following powers in relation to such lands:

- 293 (1) to plant, drain, level and otherwise improve and alter any part of the property so far as it deems necessary or desirable and it may make temporary inclosures for this purpose and for protecting or renovating turf and for protecting trees and plantations⁶;
- 294 (2) to make and maintain roads, footpaths and ways over the property and make and maintain ornamental ponds and waters on it⁷;
- 295 (3) to erect sheds for tools and materials and maintain and repair them⁸;
- 296 (4) to set apart from time to time parts of the property for persons to play games, or hold meetings or gatherings for athletic sports⁹.

In addition to these powers, the trust has the power to do anything appearing to it to be desirable for the purpose of providing or improving opportunities for the enjoyment of the commons or commonable land by the public, and in the interest of persons resorting to them; in particular to provide or arrange for the provision of facilities and services for the enjoyment or convenience of the public, including meals and refreshments, parking places for vehicles, shelters and lavatory accommodation and to erect buildings and carry out works¹⁰.

Notwithstanding the prohibition on charging admission to any common or commonable land¹¹, the trust may make reasonable charges for the use by the public of any facilities, services, parking places or other accommodation provided with respect to such land for public enjoyment or convenience¹².

Before any highway authority¹³ may enter any common or commonable land the soil of which is vested in the trust for the purpose of obtaining highway materials, the consent of the trust is required, and if this consent is withheld the highway authority may apply for an order of the justices of the peace, who may prescribe such conditions as to the mode of working and restitution of the surface as they consider expedient¹⁴.

All existing rights of common and commonable or other similar rights, rights of way and all existing private rights are preserved¹⁵ unless otherwise expressly provided¹⁶.

1 As to the National Trust see PARA 979.

2 National Trust Act 1907 s 29(2)(a) (s 29(1) renumbered as such, (2) added, by the Commons Act 2006 s 44(1), Sch 4 para 3(1), (2), (4)). As to the registration of land as common land see **COMMONS** vol 13 (2009) PARA 506 et seq.

At the date at which this volume states the law the National Trust Act 1907 s 29 (as so amended) is in force in relation to England only, and will come into force in relation to Wales on a day to be appointed: see Commons Act 2006 s 56(1); Commons Act 2006 (Commencement No 3, Transitional Provisions and Savings) (England) Order 2007, SI 2007/2584, art 2(d)(i). At the date at which this volume states the law no such day had been appointed. Until such time, in relation to Wales, the National Trust Act 1907 s 29 applies to property of the trust

which consists of common or commonable land: see s 29. As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4.

3 ie (1) land not registered as common land which is (a) regulated by an Act made under the Commons Act 1876 confirming a provisional order of the Inclosure Commissioners, or (b) subject to a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899 (National Trust Act 1907 s 29(2)(b) (as added: see note 2)); and (2) land not registered as common land or falling within head (1) above which is in the New Forest and is subject to rights of common (s 29(2)(c) (as so added)). See further **COMMONS** vol 13 (2009) PARA 475.

4 See the National Trust Act 1907 s 29(1)(A) (as so numbered: see note 2). However, notwithstanding this duty to keep commons or commonable land uninclosed, the trust may erect fences on such land by exercising its power under the National Trust Act 1971 s 23 (see the text to notes 10-12) to do anything appearing to it to be desirable for the purpose of providing or improving opportunities for the enjoyment of the commons by the public, and in the interest of the persons resorting to them: *National Trust for Places of Historic Interest or Natural Beauty v Ashbrook* [1997] 4 All ER 76, [1997] 30 LS Gaz R 29, 141 Sol Jo LB 148, (1997) Times, 3 July.

5 See the National Trust Act 1907 s 29(1)(E) (as so numbered: see note 2).

6 National Trust Act 1907 s 29(1)(B) (as so numbered: see note 2).

7 National Trust Act 1907 s 29(1)(C) (as so numbered: see note 2).

8 National Trust Act 1907 s 29(1)(D) (as so numbered: see note 2).

9 National Trust Act 1907 s 29(1)(F) (as so numbered: see note 2).

10 National Trust Act 1971 s 23(1). The erection of any building (other than a shed for tools and materials), or the construction of any other work, whereby access by the public to any such trust property (see PARA 980 note 10) is prevented or impeded is not lawful unless the consent of the Secretary of State or, in relation to Wales, the Welsh Ministers is obtained: s 23(2) (amended by the Commons Act 2006 ss 44(1), 53, Sch 4 para 4(1), (2), Sch 6 Pt 2). The Commons Act 2006 ss 39 and 40 (see **COMMONS** vol 13 (2009) PARAS 613-614) apply in relation to an application for consent as they apply in relation to an application for consent under s 38(1): National Trust Act 1971 s 23(2A) (s 23(2A)-(2C) added by the Commons Act 2006 s 44(1), Sch 4 para 4(1), (3)). The Commons Act 2006 s 41 (see **COMMONS** vol 13 (2009) PARA 615) applies in relation to the carrying out of works in contravention of the National Trust Act 1971 s 23(2) as it applies to works carried out in contravention of the Commons Act 2006 s 38(1) (and as if references to consent under that provision were to consent under the National Trust Act 1971 s 23(2)): s 23(2B) (as so added). Nothing in the Commons Act 2006 s 38 (see **COMMONS** vol 13 (2009) PARA 612) applies in relation to land to which the National Trust Act 1907 s 29 (see the text to notes 2, 3) applies: National Trust Act 1971 s 23(2C) (as so added). As to the erection of fences in the exercise of the power under s 23 see *National Trust for Places of Historic Interest or Natural Beauty v Ashbrook* [1997] 4 All ER 76, [1997] 30 LS Gaz R 29, 141 Sol Jo LB 148, (1997) Times, 3 July; and note 4. As to the Secretary of State, and as to the transfer of functions to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

At the date at which this volume states the law the National Trust Act 1971 s 23(2) (as so amended), (2A)-(2C) (as so added) is in force in relation to England only, and will come into force in relation to Wales on a day to be appointed: see Commons Act 2006 s 56(1); Commons Act 2006 (Commencement No 3, Transitional Provisions and Savings) (England) Order 2007, SI 2007/2584, art 2(d)(i). At the date at which this volume states the law no such day had been appointed. Until such time, in relation to Wales, in giving or withholding consent the Welsh Ministers must have regard to the same considerations and, if necessary, hold the same inquiries as are directed by the Commons Act 1876 (see **COMMONS** vol 13 (2009) PARA 419) to be taken into consideration and held by them before forming an opinion whether an application under the Inclosure Acts 1845 to 1882 must be acceded to or not: National Trust Act 1971 s 23(2) (prospectively repealed by the Commons Act 2006 ss 44(1), 53, Sch 4 para 4(1), (2), Sch 6 Pt 2). As to the meaning of 'England' see PARA 804 note 2.

11 ie the prohibition in the National Trust Act 1907 s 30(2): see PARA 991.

12 National Trust Act 1971 s 23(3).

13 As to highway authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 49 et seq.

14 See the National Trust Act 1907 s 36; applying the Commons Act 1876 s 20 (amended by the Statute Law Revision Act 1894 s 1, Sch 1; Statute Law Revision Act 1898, s 1, Schedule Pt I; Courts Act 2003 s 109(1), Sch 8 para 54): see **COMMONS** vol 13 (2009) PARA 587.

15 ie those rights existing before the passing of the National Trust Act 1907 (ie 21 August 1907): s 37.

16 See the National Trust Act 1907 s 37.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(iii) Property/993. Property subject to settlements.

993. Property subject to settlements.

For the purposes of the statutory power of tenants for life to grant land for public and charitable purposes¹, any grant or lease to the National Trust² of settled land is deemed to be made for the general benefit of the settled land and for charitable purposes in connection with it and, in the application of that power to grants or leases to the National Trust, five acres are substituted for one acre³.

If a settlement⁴ comprises a principal mansion house⁵, then, subject to certain conditions⁶, the National Trust may accept and retain, and the tenant for life⁷ may grant gratuitously or otherwise to the National Trust in fee simple or absolutely or for the whole or any less estate⁸ comprised in the settlement (1) the principal mansion house and the pleasure grounds and park and land, if any, usually occupied with them⁹; (2) any land occupied or enjoyed for the purposes of agriculture, sport or afforestation which, in the opinion of the Council of the National Trust, it is desirable to acquire for preserving the amenities of the principal mansion house¹⁰; and (3) an endowment consisting of (a) an annual sum charged upon any other land or buildings comprised in the settlement¹¹, or (b) the settled interest in any such land or buildings¹², or (c) capital money or investments¹³ subject to the settlement¹⁴ which, in the opinion of the council, it may be desirable to hold for the purpose of providing for the maintenance and preservation of the mansion house and amenity land¹⁵.

Any such disposition which is not otherwise authorised is void unless (i) either the written consent of the trustees of the settlement or a court order authorising the disposition to be carried into effect has been obtained¹⁶; (ii) the Secretary of State¹⁷ certifies that the principal mansion house concerned is or comprises a building of national interest or architectural, historic or artistic interest¹⁸; (iii) upon or within three months of the disposition, the National Trust executes a lease of the property transferred or such part of it as is agreed between it and the tenant for life¹⁹; and (iv) the National Trust is subject to an obligation to maintain and preserve the mansion house and amenity lands included in the disposition so far as there are funds available from the endowment but not further²⁰.

The lease must be for such term at such nominal or other yearly rent and subject to such covenants and conditions as are approved by the trustees of the settlement or the court²¹, but must contain a covenant by the lessee to admit the public to view such part or parts of the property at such times and on such terms as may be agreed upon by the National Trust²², and also restrictive covenants by the lessee for ensuring that the principal mansion house is used only as a private dwelling house and for preserving its amenities²³.

If an application is made to the court²⁴ for an order authorising the disposition, the court must have regard to: (A) the interest of all persons, born or unborn, who have or may be expected to have beneficial interests under the settlement²⁵; (B) any benefit which may be expected to accrue to the property not proposed to be assured to the National Trust either from the preservation of its amenities or otherwise²⁶; (C) the amount of the funds which will be available for the preservation and maintenance of the property by the National Trust²⁷; (D) the relation between the endowment provided²⁸ and the sum previously expended on the maintenance of the property²⁹; (E) the desirability in the public interest of the preservation of the property³⁰; and (F) such other considerations as in the circumstances of each case the court may consider to be relevant³¹.

Before giving their consent, the trustees of the settlement must give notice in writing³² to all beneficiaries of full age, other than those interested after an estate tail³³ and must have regard to the same considerations as are applicable to the court if it is requested by any such beneficiary not to consent³⁴ and to such other considerations as in the circumstances of the case they may consider to be relevant³⁵.

The powers given to a tenant for life are also exercisable by statutory owners, but only with a court order³⁶.

These special powers conferred on the National Trust or on tenants for life are in addition to and not in derogation of any other powers conferred on them by Act of Parliament, deed or will³⁷.

As from a day to be appointed the powers and duties conferred on the council by the above provisions become powers and duties of the Board of Trustees³⁸.

1 Ie for the purposes of the Settled Land Act 1925 s 55: see **SETTLEMENTS** vol 42 (Reissue) PARA 864.

2 As to the National Trust see PARA 979.

3 National Trust Act 1937 s 6(2). If the council declares by resolution that in furtherance of the general purposes of the National Trust it is desirable that the public should have access to any land, building, furniture, picture or chattel of any description the National Trust may act in any trusts for or as trustee of such property as if the same were devoted to public purposes within the meaning of the National Trust Act 1907 s 4(2) (see PARA 984); National Trust Act 1939 s 13. As to the Council of the National Trust see PARA 981. As to the powers and proceedings of the council see PARA 985.

4 'Settlement' includes an instrument or instruments which under the Settled Land Act 1925 is or are deemed to be or which together constitute a settlement; and a settlement which is deemed to have been made by any person or to be subsisting for the purposes of the Act: s 117(1)(xxiv) (definition applied by the National Trust Act 1939 s 2). As to the phasing out of strict settlements under the 1925 Act see the Trusts of Land and Appointment of Trustees Act 1996 s 2, Sch 1; **LIMITATION PERIODS** vol 68 (2008) PARA 1022; **REAL PROPERTY** vol 39(2) (Reissue) PARA 65; **SETTLEMENTS** vol 42 (Reissue) PARA 606.

5 'Principal mansion house' means a principal mansion house on settled land within the meaning of the Settled Land Act 1925 s 65: National Trust Act 1939 s 2. The Settled Land Act 1925 s 65 does not expressly define 'principal mansion house', but where a house is usually occupied as a farmhouse or where the site of any house and the pleasure grounds and park and land, if any, usually occupied with it do not together exceed 25 acres, the house is not deemed a principal mansion house: see s 65(2); and **SETTLEMENTS** vol 42 (Reissue) PARA 789. 'Settled land' includes land which is deemed to be settled land: s 117(1)(xxiv) (definition applied by the National Trust Act 1939 s 2). See also note 4.

6 See the National Trust Act 1939 s 4; and heads (i)-(iv) in the text.

7 'Tenant for life' includes a person (not being a statutory owner) who has the powers of a tenant for life under the Settled Land Act 1925 and includes one or more persons together constituting the tenant for life: s 117(1)(xxviii) (definition applied by the National Trust Act 1939 s 2). 'Statutory owner' means the trustees of the settlement or other persons who during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under the Settled Land Act 1925; but it does not include the trustees where under a court order or otherwise they have power to convey the settled land in the name of the tenant for life: s 117(1)(xxvi) (definition applied by the National Trust Act 1939 s 2). See also note 4.

8 Ie not being a leasehold interest created under the National Trust Act 1939 s 4: see the text to notes 16-20.

9 National Trust Act 1939 s 3(1)(a).

10 National Trust Act 1939 s 3(1)(b). These lands are referred to as 'amenity lands': see s 3(1)(b).

11 National Trust Act 1939 s 3(1)(c)(i).

12 Ie including any rights, easements or interest in or over them: National Trust Act 1939 s 3(1)(c)(ii).

13 Any such transfer of capital money or investments must be executed by the trustees of the settlement by the direction of the tenant for life: National Trust Act 1939 s 3(3). As to the meaning of 'trustees of the

settlement' see the Settled Land Act 1925 s 30 (see **SETTLEMENTS** vol 42 (Reissue) PARA 750): definition applied by the National Trust Act 1939 s 2.

14 National Trust Act 1939 s 3(1)(c)(iii).

15 National Trust Act 1939 s 3(1). Any such disposition is deemed to be a transaction authorised by the Settled Land Act 1925, and that Act applies accordingly: National Trust Act 1939 s 3(2).

16 National Trust Act 1939 s 4(a).

17 The National Trust Act 1939 s 4(b) refers to the Commissioner of Works, whose functions have now been transferred to the Secretary of State: see PARA 802 note 2.

18 National Trust Act 1939 s 4(b).

19 National Trust Act 1939 s 4(c). As to the lease see further s 4(c). See also s 5; and the text to notes 21-23.

20 National Trust Act 1939 s 4(d).

21 National Trust Act 1939 s 5(1).

22 National Trust Act 1939 s 5(2)(a).

23 National Trust Act 1939 s 5(2)(b). The lease may contain a covenant, condition or agreement by the lessee against assignment, underletting, charging or parting with possession without the licence or consent of the National Trust; such licence or consent not to be unreasonably withheld: s 5(2)(c). The statutory power to discharge or modify restrictive covenants affecting land (ie the Law of Property Act 1925 s 84: see **EQUITY** vol 16(2) (Reissue) PARA 630 et seq) does not apply to restrictions imposed by the lease: National Trust Act 1939 s 5(3).

24 Ie under the National Trust Act 1939 s 4(a): see the text to note 16. On such an application, the settlement trustees, all persons (whether of full age or not) having beneficial interests under the settlement not limited to take effect subsequent to an estate tail to which a person already in existence is or may become entitled in possession and such other persons, if any, as the court directs must be made respondents: s 7. The Settled Land Act 1925 s 113 (see **SETTLEMENTS** vol 42 (Reissue) PARA 792) governs the jurisdiction and procedure of the court: National Trust Act 1939 s 11.

25 National Trust Act 1939 s 7(i). This includes the benefit, whether financial or of any other character, to be derived by such persons from the lease and from any future lease or tenancy that may be granted: s 7(i).

26 National Trust Act 1939 s 7(ii).

27 National Trust Act 1939 s 7(iii).

28 Ie under the National Trust Act 1939 s 3(1)(c): see head (3) in the text.

29 National Trust Act 1939 s 7(iv).

30 National Trust Act 1939 s 7(v).

31 National Trust Act 1939 s 7(vi).

32 The regulations respecting notices in the Law of Property Act 1925 s 196 (see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 621; **MORTGAGE** vol 77 (2010) PARA 454) extend to such a notice: National Trust Act 1939 s 10.

33 National Trust Act 1939 s 6(1). No such consent by the trustees is effective if any person to whom such notice is given within three months after service requests the trustees in writing not to consent or if any person having such a beneficial interest is under 21 or of unsound mind: s 6(1).

34 Ie those considerations set out in the National Trust Act 1939 s 7(i)-(v): see the text to notes 25-30.

35 National Trust Act 1939 s 6(2). The trustees are not liable for giving any such consent: see the Settled Land Act 1925 s 97(a) (applied by the National Trust Act 1939 s 6(3)); and **SETTLEMENTS** vol 42 (Reissue) PARA 891.

36 See the National Trust Act 1939 s 9(2), (3).

37 See the National Trust Act 1939 s 15. The National Trust or tenant for life as the case may be may exercise all such other powers as if the National Trust Act 1939 had not been passed: s 15. Section 15 also refers to trustees for sale on whom powers were conferred by the Law of Property Act 1925 s 28(1) (repealed) and by virtue of the National Trust Act 1939 s 9(1) (not repealed, but in practice no longer relevant). As to the replacement of the former system of trusts for sale of land with a new system of trusts of land see the Trusts of Land and Appointment of Trustees Act 1996 s 1; and **LIMITATION PERIODS** vol 68 (2008) PARA 1023; and **REAL PROPERTY** vol 39(2) (Reissue) PARA 65.

38 See PARA 986.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(iii) Property/994. Agreements restrictive of the use of land.

994. Agreements restrictive of the use of land.

In addition to the power of the National Trust¹ to enforce restrictive agreements and covenants benefiting its land in the same manner as any other landowner², it may enter into an agreement with, or take a covenant from, any person³ who is able to bind land to the effect that the land is to be subject, permanently or for a specified period, to conditions restricting its planning, development⁴ or use in any manner, and the agreement or covenant is enforceable by the trust against the persons deriving title under the other party to such agreement or covenant to the same extent as if the trust were possessed of or entitled to or interested in adjacent land and as if the agreement or covenant had been, and had been expressed to be, entered into for the benefit of such adjacent land⁵.

1 As to the National Trust see PARA 979.

2 See eg *National Trust for Places of Historic Interest or Natural Beauty v Midlands Electricity Board* [1952] Ch 380, [1952] 1 All ER 298. For the general law as to the enforcement of restrictive covenants see **EQUITY** vol 16(2) (Reissue) PARA 613 et seq.

3 As to the meaning of 'person' see PARA 803 note 16.

4 For the statutory control of development generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 217 et seq.

5 See the National Trust Act 1937 s 8; and *Gee v National Trust for Places of Historic Interest or Natural Beauty* [1966] 1 All ER 954, [1966] 1 WLR 170, CA. Registration either under the Land Charges Act 1972 as a Class D(ii) land charge (see **LAND CHARGES** vol 26 (2004 Reissue) PARAS 633, 635), or in the case of registered land under the Land Registration Act 2002 (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 992 et seq) is necessary to enable such an agreement or covenant to be enforced against a purchaser for value from the original party to the agreement or covenantor, and the effect of this statutory provision is merely to enable the National Trust to enforce such an agreement or covenant, which would otherwise not be enforceable, without the necessity of showing that it possessed adjacent land capable of being benefited.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(iii) Property/995. Exemptions.

995. Exemptions.

The property of the National Trust¹ is entitled to special treatment in the following circumstances:

- 297 (1) if a compulsory purchase order is served under the provisions of the Acquisition of Land Act 1981 in respect of any land held inalienably by the trust and is not withdrawn after objection, the acquisition becomes subject to special parliamentary procedure²;
- 298 (2) land forming part of the property of the trust cannot be acquired for the purposes of allotments or cottage holdings³;
- 299 (3) certain powers of compulsory acquisition conferred by the National Parks and Access to the Countryside Act 1949⁴ and the power of compulsory acquisition under the Forestry Act 1967⁵ are not exercisable in respect of land held inalienably by the trust;
- 300 (4) where the interest of the landlord or any superior landlord in the property comprised in any tenancy belongs to the trust, the Secretary of State or the Welsh Ministers⁶ may certify that it is requisite, for the purpose of securing that the property will be used or occupied in a manner better suited to its nature, that the use or occupation of the property should be changed⁷.

1 As to the National Trust see PARA 979.

2 See the Acquisition of Land Act 1981 s 18; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 603 et seq. As to special parliamentary procedure see **PARLIAMENT** vol 34 (Reissue) PARA 912 et seq.

3 See the Land Settlement (Facilities) Act 1919 s 28(4); and **AGRICULTURAL LAND** vol 1 (2008) PARA 546. As to the application to cottage holdings see the Small Holdings and Allotments Act 1926 s 12; the Agricultural Land (Utilisation) Act 1931 s 12(1); and **AGRICULTURAL LAND** vol 1 (2008) PARA 597 et seq.

4 National Parks and Access to the Countryside Act 1949 s 113. The powers referred to are those conferred by Pt V (ss 59-83), Pt VI (ss 85-115): see eg ss 76, 77; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 633-634.

5 See the Forestry Act 1967 s 40(4) (substituted by the Forestry Act 1981 s 2); and **FORESTRY** vol 52 (2009) PARA 45.

6 The Landlord and Tenant Act 1954 s 57(7) refers to the Minister of Works, whose functions have been transferred to the Secretary of State: see PARA 802 note 2. In relation to Wales the certification function is exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom it is exercisable: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 Sch 11 para 30. As to the transfer of functions to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

7 See the Landlord and Tenant Act 1954 s 57(7); and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 769.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(iv) Finance/996. Application of revenue.

(iv) Finance

996. Application of revenue.

The revenue of the National Trust¹ must be applied, first in payment of the expenses incurred in connection with the trust and its property, then in payment of interest on and instalments of money borrowed by it, and the balance, if any, must be applied in furtherance of the objects of the trust² or invested in investments in which the trustees are by law entitled to invest trust funds³. However, the Council of the National Trust⁴ may resolve that the expenses of any particular purpose must be defrayed out of a specified fund⁵. The capital of the trust must be applied, subject to any conditions attached to any particular gifts and to the trust's powers of investment⁶, in the repayment of loans or otherwise in furthering the objects of the trust⁷.

Subject to any special trusts or directions affecting any particular property, the council⁸ may invest the balance of its annual revenue and any money received by it on capital account in (1) investments for the time being authorised by law for the investment of trust funds⁹; (2) the public funds of any of Her Majesty's dominions or territories under her protection or the United States of America¹⁰; and (3) deposit receipts, bonds, debentures, debenture stock, mortgages, preference, ordinary, deferred or common stock or shares or other securities in any municipal, railway, public utility, commercial or industrial corporation, company or body registered or incorporated in the United Kingdom¹¹ or any of Her Majesty's dominions or territories under her protection or the United States of America¹². The trust may retain and hold any investments transferred to it otherwise than by way of purchase notwithstanding that they are not otherwise authorised¹³.

As from a day to be appointed the powers and duties conferred on the council by these provisions become powers and duties of the Board of Trustees¹⁴.

1 As to the National Trust see PARA 979.

2 For the objects of the trust see PARA 983.

3 See the National Trust Act 1907 s 27 (amended by the National Trust Act 1937 s 14). For the investments authorised see the text to notes 8-13.

4 As to the Council of the National Trust see PARA 981. As to the powers and proceedings of the council see PARA 985.

5 See the National Trust Act 1937 s 10.

6 See the text to notes 8-13.

7 National Trust Act 1907 s 28.

8 All investments made by the council must be made with the advice and under the direction of a finance committee: see the National Trust Act 1953 s 4(3) (repealed as from a day to be appointed by SI 2005/712). At the date at which this volume states the law no such day had been appointed. As to the appointment of committees by the council see PARA 985.

9 National Trust Act 1953 s 4(1)(i). As to the investment of trust funds see **TRUSTS** vol 48 (2007 Reissue) PARA 1005 et seq.

10 National Trust Act 1953 s 4(1)(ii). As to Her Majesty's dominions and protected territories see
COMMONWEALTH vol 13 (2009) PARAS 707, 708.

11 As to the meaning of 'United Kingdom' see PARA 804 note 2.

12 National Trust Act 1953 s 4(1)(iii).

13 National Trust Act 1953 s 4(2).

14 See PARA 986.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(iv) Finance/997. Borrowing powers.

997. Borrowing powers.

The National Trust¹ may raise money by borrowing on the security of certain of its property² by way of specific mortgage and by charging or appropriating as security for money borrowed the rents, profits and income derived from any of its land, including that which it holds for the benefit of the nation³.

1 As to the National Trust see PARA 979.

2 Ie property other than that specified in the National Trust Act 1907 Sch 1, or which is otherwise inalienable: National Trust Act 1907 s 22. As to inalienable property see PARA 991.

3 National Trust Act 1907 s 22. The provisions of the Companies Clauses Consolidation Act 1845 ss 45, 47-55 (see COMPANIES vol 15 (2009) PARA 1744 et seq) are applicable to the raising of money by the trust: see the National Trust Act 1907 s 23. Mortgagees, other than those of specific property with a power of foreclosure and sale, may appoint a receiver where the principal in arrears is not less than £1,000: see s 24. As to the power of foreclosure see MORTGAGE vol 77 (2010) PARA 566 et seq; and as to receivers see MORTGAGE vol 77 (2010) PARAS 475 et seq, 560 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(iv) Finance/998. Accounts.

998. Accounts.

The National Trust¹ must cause to be kept proper books of accounts with respect to: (1) all sums of money received and expended by the trust and the matters in respect of which the expenditure takes place²; (2) all purchases and sales of the trust's property³; and (3) the trust's assets and liabilities⁴. Proper books of account are not deemed to be kept with respect to these matters if there are not kept such books as are necessary to give a true and fair view of the state of the affairs of the trust and to explain its transactions⁵. Separate accounts must be kept of sums received or expended by the trust and not applicable at the discretion of the Council of the National Trust⁶ to its general purposes⁷. Certain information must be included in the accounts laid before an ordinary meeting⁸ and the accounts must comply with certain requirements⁹. Once at least in every year the accounts of the trust must be examined and audited by an auditor or auditors to be elected annually¹⁰ at the annual general meeting¹¹.

1 As to the National Trust see PARA 979.

2 National Trust Act 1971 s 20(1)(a).

3 National Trust Act 1971 s 20(1)(b).

4 National Trust Act 1971 s 20(1)(c).

5 National Trust Act 1971 s 20(2).

6 As to the Council of the National Trust see PARA 981. As to the powers and proceedings of the council see PARA 985.

7 National Trust Act 1937 s 9. As to the general purposes of the trust see PARA 983.

8 As to ordinary meetings see PARA 989.

9 The accounts to be laid before an ordinary meeting must include: (1) statements dealing with income and expenditure and with all other movements on funds of the trust and, so far as practicable, of trusts administered by the trust for the preceding year (see the National Trust Act 1971 s 21(1)(a)); and (2) statements of funds, assets and liabilities (see s 21(1)(b)). The accounts must give a true and fair view of the trust's state of affairs and transactions for the year; but it is not necessary to place any value on inalienable property or on other property or personal chattels held in trust, or acquired by the trust for preservation and it is not necessary to take account of any obligation for the future maintenance of property held by the trust for preservation: s 21(2). 'Year' means a period of 12 months ending on 31 December: s 3(1). For the particulars to be shown in the accounts see s 21(3), (6); and as from a day to be appointed the Charities (National Trust) Order 2005, SI 2005/712, Appendix clause 30(3). At the date at which this volume states the law no such day had been appointed. The accounts must be approved by the Council of the National Trust and signed by two of its members (s 21(4)) and an auditors' report must be annexed to them (see s 21(5)).

10 A person is not eligible for appointment as auditor unless eligible for appointment as a statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264) (see COMPANIES vol 15 (2009) PARA 957 et seq): National Trust Act 1971 s 22 proviso (amended by SI 2008/948).

11 National Trust Act 1971 s 22. Any previously elected auditor or auditors is be eligible for re-election: s 22. As to general meetings see PARA 989.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/2. INSTITUTIONS/(17) THE NATIONAL TRUST/(iv) Finance/999. Contributions, grants and loans.

999. Contributions, grants and loans.

Certain members of the National Trust subscribe to its funds¹.

A local authority may, with the consent of the Secretary of State² or, in relation to Wales, the Welsh Ministers³, contribute to the expenses of the acquisition by the trust of any land or building wholly or partly within, or in the neighbourhood of, its district or towards the expenses of maintaining and preserving any such land or building⁴.

In relation to buildings in Wales, the Welsh Ministers⁵ have power to make grants to the trust to defray any expenses incurred in the acquisition of buildings which appear to them to be of outstanding historic or architectural interest⁶; or to make grants to defray the expense of repairing or maintaining such a building or of keeping up any adjacent land or of repairing or maintaining any objects kept in such a building, or of keeping up a garden or other land which appears to them to be of outstanding historic interest but which is not adjacent to such a building⁷. In relation to buildings situated in England, equivalent powers belong to the Historic Buildings and Monuments Commission for England⁸.

Grants and loans may be made by the trustees of the National Heritage Memorial Fund⁹.

1 See PARA 980. As to the National Trust see PARA 979.

2 In relation to the Greater London Council such consent is not required: see the National Trust Act 1937 s 7(2) (amended by SI 1966/1305). The Greater London Council ceased to exist on 1 April 1986 and its functions were transferred mainly to the London borough councils and the Common Council of the City of London: see the Local Government Act 1985 s 1(1)(a), (2), Pt II (ss 2-17); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 17. The National Trust Act 1937 s 7 refers to the Minister of Health, whose functions have been transferred to the Secretary of State: see PARA 802 note 2.

3 As to the transfer of functions to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 See the National Trust Act 1937 s 7(2). As to grants of land to the trust by local authorities see PARA 991.

5 The Historic Buildings and Ancient Monuments Act 1953 refers to the Minister of Works, whose functions were transferred to the Secretary of State: see PARA 802 note 2. The Historic Buildings and Ancient Monuments Act 1953 ss 4, 6 apply only where the property or buildings are not situated in England: see s 4(1), s 6(4) (added by the National Heritage Act 1983 s 33, Sch 4). The powers of the Secretary of State under the Historic Buildings and Ancient Monuments Act 1953 in relation to Wales are transferred to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 Sch 11 para 30. The Historic Buildings and Ancient Monuments Act 1953 does not extend to Northern Ireland (see s 22(5)) and thus the Secretary of State's powers under ss 4, 6 extend to Scotland only. As to the Welsh Ministers see PARA 802. As to the meaning of 'England' see PARA 804 note 2.

6 See the Historic Buildings and Ancient Monuments Act 1953 s 6(2); and PARA 1075.

7 See the Historic Buildings and Ancient Monuments Act 1953 s 4; and PARA 1070.

8 See the Historic Buildings and Ancient Monuments Act 1953 ss 3A, 5B; and PARAS 1069, 1074. As to the Historic Buildings and Monuments Commission for England see PARA 803.

9 See the National Heritage Act 1980 s 3; and PARA 816.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(1) WORLD HERITAGE SITES/1000. World Heritage Sites.

3. IMMOVEABLE CULTURAL HERITAGE

(1) WORLD HERITAGE SITES

1000. World Heritage Sites.

The purpose of the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage¹ is to establish an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organised on a permanent basis and in accordance with modern scientific methods².

For the purposes of the convention, the following are considered as 'cultural heritage':

- 301 (1) monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;
- 302 (2) groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;
- 303 (3) sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view³;

and the following are considered as 'natural heritage':

- 304 (a) natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;
- 305 (b) geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;
- 306 (c) natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty⁴.

Each state which is a party to the convention⁵ must identify and delineate the different cultural heritage and natural heritage situated on its territory⁶. Each state undertakes to take measures for ensuring the identification, protection, conservation, presentation and transmission to future generations of its cultural and natural heritage⁷.

An intergovernmental committee for the protection of the cultural and natural heritage of outstanding universal value, called the 'World Heritage Committee', is established within UNESCO⁸. The committee must establish, keep up to date and publish, a list (the 'World Heritage List') of properties forming part of the cultural heritage and natural heritage which it considers as having outstanding universal value in terms of such criteria as it establishes⁹. The committee must also establish, keep up to date and publish, whenever circumstances so require, a list (the 'list of World Heritage in Danger') of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which

assistance has been requested under the convention¹⁰. The committee must consider requests for international assistance from states party to the convention with respect to property forming part of their cultural or natural heritage and included or potentially suitable for inclusion in these lists¹¹. The purpose of such requests may be to secure the protection, conservation, presentation or rehabilitation of such property, or to help identify such property¹². The committee must determine an order of priorities for its operations and draw up, keep up to date and publicise a list of property for which international assistance has been granted¹³.

A fund for the protection of the world cultural and natural heritage of outstanding universal value, called the 'World Heritage Fund', is established under the convention, and this is administered by the committee¹⁴. The states party to the convention must endeavour by all appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect by people of their cultural and natural heritage, and keep the public broadly informed of the dangers threatening this heritage and of the activities carried on in pursuance of the convention¹⁵.

There are currently 28 world heritage sites in the United Kingdom¹⁶. The government has issued a circular on the protection of world heritage sites¹⁷ the purpose of which is to provide updated planning policy guidance on the level of protection and management required for world heritage sites¹⁸, as well as planning policy guidance in respect of planning and the historic environment¹⁹.

1 See the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972).

2 See the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) preamble.

3 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) art 1.

4 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) art 2.

5 The convention was ratified by the United Kingdom on 29 May 1984.

6 See the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) art 3.

7 See the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) arts 4-7.

8 See the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) arts 8-10.

9 See the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) arts 11, 12.

10 See the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) arts 11, 12.

11 See the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) art 13. As to the conditions and arrangements for international assistance see arts 19-26.

12 See the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) art 13.

13 See the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) art 13.

14 See the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) arts 15-18.

15 See the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972) art 27.

16 A list of all the sites is available on the Department for Culture, Media and Sport website at www.culture.gov.uk. As to the meaning of 'United Kingdom' see PARA 804 note 2.

17 In *Communities and Local Government Circular 07/09 on the Protection of World Heritage Sites*. A copy of the circular is available on the Department for Communities and Local Government website at www.communities.gov.uk.

18 As to planning circulars see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 9.

19 See *Planning Policy Guidance Note 15: Planning and the Historic Environment (PPG15)* which provides a full statement of government policies for the identification and protection of historic buildings, conservation areas and other elements of the historic environment, and explains the role played by the planning system in their protection. A copy of PPG 15 is available on the Department for Communities and Local Government website at www.communities.gov.uk. As to planning policy guidance see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 9.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(i) European Convention/1001. European Convention on the Protection of the Archaeological Heritage.

(2) ARCHAEOLOGICAL SITES AND MONUMENTS

(i) European Convention

1001. European Convention on the Protection of the Archaeological Heritage.

The aim of the European Convention on the Protection of the Archaeological Heritage¹ is to protect the archaeological heritage as a source of the European collective memory and as an instrument for historical and scientific study². To this end, all remains and objects and any other traces of mankind from past epochs are considered to be elements of the archaeological heritage: (1) the preservation and study of which help to retrace the history of mankind and its relation with the natural environment; (2) for which excavations or discoveries and other methods of research into mankind and the related environment are the main sources of information; and (3) which are located in any area within the jurisdiction of the states party to the convention³. 'Archaeological heritage' includes structures, constructions, groups of buildings, developed sites, moveable objects, monuments of other kinds as well as their context, whether situated on land or under water⁴.

The states party to the convention⁵ each undertake:

- 307 (a) to institute a legal system for the protection of archaeological heritage⁶;
- 308 (b) to preserve archaeological heritage and guarantee the scientific significance of archaeological research work⁷;
- 309 (c) to implement measures for the physical protection of archaeological heritage⁸;
- 310 (d) to seek to reconcile and combine the respective requirements of archaeology and development plans by ensuring that archaeologists participate in planning policies designed to ensure well-balanced strategies for the protection, conservation and enhancement of sites of archaeological interest⁹;
- 311 (e) to arrange for public financial support for archaeological research and conservation¹⁰;
- 312 (f) to take steps to facilitate the collection and dissemination of scientific information concerning archaeological matters¹¹;
- 313 (g) to promote public awareness of the value of the archaeological heritage and to promote public access to important elements of its archaeological heritage¹²;
- 314 (h) to take steps for the prevention of the illicit circulation of elements of the archaeological heritage¹³.

The main legislation relating to the protection of ancient monuments and archaeological areas in England and Wales is the Ancient Monuments and Archaeological Areas Act 1979¹⁴.

¹ Ie the European Convention on the Protection of the Archaeological Heritage (revised) (Council of Europe ETS No 143: Valetta 1992).

² European Convention on the Protection of the Archaeological Heritage (revised) (Council of Europe ETS No 143: Valetta 1992) art 1.1.

3 European Convention on the Protection of the Archaeological Heritage (revised) (Council of Europe ETS No 143: Valetta 1992) art 1.2.

4 European Convention on the Protection of the Archaeological Heritage (revised) (Council of Europe ETS No 143: Valetta 1992) art 1.3.

5 The convention was ratified by the United Kingdom on 19 September 2000.

6 See the European Convention on the Protection of the Archaeological Heritage (revised) (Council of Europe ETS No 143: Valetta 1992) art 2. As to the protection of ancient monuments and archaeological areas see PARA 1002 et seq.

7 See the European Convention on the Protection of the Archaeological Heritage (revised) (Council of Europe ETS No 143: Valetta 1992) art 3.

8 See the European Convention on the Protection of the Archaeological Heritage (revised) (Council of Europe ETS No 143: Valetta 1992) art 4.

9 See the European Convention on the Protection of the Archaeological Heritage (revised) (Council of Europe ETS No 143: Valetta 1992) art 5. For planning policy guidance in this respect see *Planning Policy Guidance Note 16: Archaeology and Planning (PPG16)* which sets out the Secretary of State's policy on archaeological remains on land, and how they should be preserved or recorded both in an urban setting and in the countryside. A copy of the guidance is available on the Department for Communities and Local Government website at www.communities.gov.uk. As to planning policy guidance see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 9.

10 See the European Convention on the Protection of the Archaeological Heritage (revised) (Council of Europe ETS No 143: Valetta 1992) art 6.

11 See the European Convention on the Protection of the Archaeological Heritage (revised) (Council of Europe ETS No 143: Valetta 1992) arts 7, 8.

12 See the European Convention on the Protection of the Archaeological Heritage (revised) (Council of Europe ETS No 143: Valetta 1992) art 9.

13 See the European Convention on the Protection of the Archaeological Heritage (revised) (Council of Europe ETS No 143: Valetta 1992) art 10. As to export and import control see PARA 1092 et seq.

14 See PARA 1002 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/A. INTRODUCTION/1002. Application of the Ancient Monuments and Archaeological Areas Act 1979.

(ii) Ancient Monuments and Archaeological Areas

A. INTRODUCTION

1002. Application of the Ancient Monuments and Archaeological Areas Act 1979.

The Ancient Monuments and Archaeological Areas Act 1979 was passed to consolidate and amend the law relating to ancient monuments¹ and make provision for the investigation, preservation and recording of matters of archaeological or historical interest and for the regulation of operations affecting such matters². The Act applies to England, Wales and Scotland³; and may be applied by order, subject to consultation with the Council of the Isles of Scilly, to those Isles⁴. The provisions are applied to Crown land⁵, ecclesiastical property⁶ and monuments⁷ in territorial waters⁸; and specific provision is made as to the application of the Act to the Broads⁹.

1 As to the meaning of 'ancient monument' see PARA 1025.

2 See PARA 1003 et seq.

3 See the Ancient Monuments and Archaeological Areas Act 1979 s 65(3). As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4.

4 See the Ancient Monuments and Archaeological Areas Act 1979 s 52. The Act applies as if that council were a district council (s 52(a)), and subject to any modifications specified in the order (s 52(b)). At the date at which this volume states the law no such order had been made. As to the making of orders see PARA 1005. As to the Council of the Isles of Scilly see **LOCAL GOVERNMENT** vol 69 (2009) PARA 36. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

5 See the Ancient Monuments and Archaeological Areas Act 1979 s 50; and PARA 1003.

6 See the Ancient Monuments and Archaeological Areas Act 1979 s 51; and PARAS 1006, 1020-1021. 'Ecclesiastical property' means land belonging to an ecclesiastical benefice of the Church of England, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese of the Church of England or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction: s 51(5). Where any ecclesiastical property is vested in the incumbent of a benefice which is vacant, for the purposes of the Ancient Monuments and Archaeological Areas Act 1979 it is treated as being vested in the Diocesan Board of Finance for the diocese in which the land is situated: s 51(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 s 14, Sch 5 para 20). 'Land' means, in England and Wales, any corporeal hereditament, including a building or a monument and, in relation to any acquisition of land, includes any interest in or right over land: Ancient Monuments and Archaeological Areas Act 1979 s 61(1). As to the Church of England see **ECCLESIASTICAL LAW** vol 14 PARA 345 et seq. As to corporeal hereditaments see **REAL PROPERTY** vol 39(2) (Reissue) PARA 80.

7 As to the meaning of 'monument' see PARA 1009.

8 See the Ancient Monuments and Archaeological Areas Act 1979 s 53; and PARA 1004.

9 The Ancient Monuments and Archaeological Areas Act 1979 Pt I (ss 1-32) (see PARAS 1009-1042) and Pt II (ss 33-41) (see PARAS 1043-1055) and s 45(2), (3) (see PARA 1061) apply, in relation to the Broads (as defined by the Norfolk and Suffolk Broads Act 1988: see **WATER AND WATERWAYS** vol 101 (2009) PARA 735), as if the Broads Authority were a local authority: s 52A (added by the Norfolk and Suffolk Broads Act 1988 s 2(5), (6), Sch 3 Pt I). The Ancient Monuments and Archaeological Areas Act 1979 Pt I (ss 1-32) and Pt II (ss 33-41) have effect as if in relation to any monument in a National Park for which a National Park authority is the local planning authority, or to any area the whole or any part of which is comprised in such a park, the references in those Parts to a

local authority included references to that National Park authority: Environment Act 1995 Sch 9 para 10(1). The Ancient Monuments and Archaeological Areas Act 1979 s 45(2), (3) has effect as if a National Park authority were a local authority for the purposes of the Act and as if the relevant park were the authority's area: Environment Act 1995 Sch 9 para 10(3). 'Local authority' means: in England, the council of a county or district, the council of a London borough, and the Common Council of the City of London; and in Wales, the council of a county or county borough: Ancient Monuments and Archaeological Areas Act 1979 s 61(1) (definition amended by the Local Government Act 1985 s 102, Sch 17; Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 56(3), Sch 18). As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734. As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526. As to local government areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/A. INTRODUCTION/1003. Crown land.

1003. Crown land.

Notwithstanding any interest of the Crown in Crown land¹, but subject as follows below², (1) a monument³ which for the time being is Crown land may be included in the schedule of monuments⁴; and (2) any restrictions or powers imposed or conferred by any of the provisions of the Ancient Monuments and Archaeological Areas Act 1979 apply and are exercisable in relation to Crown land and in relation to anything done on Crown land otherwise than by or on behalf of the Crown, but not so as to affect any interest of the Crown therein⁵.

Except with the consent of the appropriate authority⁶, no power under the Act to enter, or to do anything, on any land is exercisable in relation to land which for the time being is Crown land⁷; and no interest in land which for the time being is Crown land may be acquired compulsorily⁸ under the Act⁹.

1 'Crown land' means land in which there is a Crown interest or a Duchy interest; 'Crown interest' means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, and includes any estate or interest held in right of the Prince and Steward of Scotland; 'Duchy interest' means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall; and 'government department' includes any Minister of the Crown: Ancient Monuments and Archaeological Areas Act 1979 s 50(4). For the purposes of s 50, the Welsh Assembly Commission is treated as a government department (and references to the Crown in that section must be construed accordingly): see the National Assembly for Wales Commission (Crown Status) (No 2) Order, SI 2007/1353, art 3. As to the meaning of 'land' see PARA 1002 note 6. As to the Crown see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 353; CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 1 et seq. As to the Duchy of Lancaster see CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq. As to the Duchy of Cornwall see CROWN PROPERTY vol 12(1) (Reissue) PARA 318 et seq. As to the Welsh Assembly Commission see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

For the purposes of the Ancient Monuments and Archaeological Areas Act 1979: (1) the interest of a corporate officer or the corporate officers in any land must be regarded as a Crown interest within the meaning of s 50; (2) any operations carried out by or on behalf of a corporate officer or the corporate officers must be regarded as carried out by or on behalf of the Crown; and (3) the use of the land for the purposes of the House of Lords, the House of Commons or both those Houses must be regarded as use by or on behalf of the Crown: Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 3(1)(a)-(c). In relation to land which is Crown land, within the meaning of the Ancient Monuments and Archaeological Areas Act 1979 s 50, by virtue only of head (1) above, the 'appropriate authority' for the purposes of that section (see note 6) is the corporate officer or, as the case may be, the corporate officers in whom is vested the interest in the land: Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 3(1). To the extent that a corporate officer or the corporate officers has or have responsibility for the management of any land in which he or they has or have no interest but which forms part of the Palace of Westminster, the corporate officer or corporate officers must be regarded as having the status of a government department for the purposes of the Ancient Monuments and Archaeological Areas Act 1979 s 50(4)(a) (see note 6): Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 3(2). In art 3 'land' has the same meaning as in the Ancient Monuments and Archaeological Areas Act 1979 but a licence is not regarded as an interest in land: see arts 1(3), 3(3). 'Corporate officer' means either the corporate officer of the House of Lords or the corporate officer of the House of Commons and 'corporate officers' means those two corporate officers acting jointly: art 1(2). As to the corporate officers of the House of Lords and the House of Commons see PARLIAMENT vol 78 (2010) PARA 990.

2 ie subject to the Ancient Monuments and Archaeological Areas Act 1979 s 50.

3 As to the meaning of 'monument' see PARA 1009.

4 Ancient Monuments and Archaeological Areas Act 1979 s 50(1)(a). As to the schedule of monuments see PARA 1010.

5 Ancient Monuments and Archaeological Areas Act 1979 s 50(1)(b).

6 In relation to any land, 'appropriate authority' means: (1) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land (Ancient Monuments and Archaeological Areas Act 1979 s 50(4)(a)); (2) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy (s 50(4)(b)); (3) in relation to land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints (s 50(4)(c)); and (4) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that department (s 50(4)(d)). If any question arises as to what authority is the appropriate authority in relation to any land, the question must be referred to the Treasury, whose decision is final: s 50(4). As to the application of s 50(4) to the corporate officers of the House of Lords and the House of Commons see note 1. The function of the Treasury under s 50, in so far as it is exercisable in relation to Wales, is not transferred to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 Sch 11 para 30. As to the meaning of 'Treasury' see PARA 809 note 4. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4. As to the Crown Estate Commissioners see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 280 et seq.

7 Ancient Monuments and Archaeological Areas Act 1979 s 50(2)(a). As to powers of entry see PARAS 1057-1060.

8 Ie under the Ancient Monuments and Archaeological Areas Act 1979 Pt I (ss 1-32).

9 Ancient Monuments and Archaeological Areas Act 1979 s 50(2)(b). As to the compulsory acquisition of ancient monuments see PARA 1026.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/A. INTRODUCTION/1004. Monuments in territorial waters.

1004. Monuments in territorial waters.

A monument¹ situated in, on or under the sea bed² within the seaward limits of United Kingdom territorial waters³ adjacent to the coast of Great Britain (a 'monument in territorial waters') may be included⁴ in the schedule of monuments⁵. The entry in the schedule relating to any monument in territorial waters must describe the monument as lying off the coast of England, or of Scotland, or of Wales⁶; and any such monument is treated for the purposes of the Ancient Monuments and Archaeological Areas Act 1979 as situated in the country specified for this purpose in the entry relating to the monument in the schedule⁷.

Without prejudice to any jurisdiction exercisable apart from this provision, proceedings for any offence under the Ancient Monuments and Archaeological Areas Act 1979 committed in United Kingdom territorial waters adjacent to the coast of Great Britain may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain⁸.

Notwithstanding that by virtue of these provisions⁹ the Ancient Monuments and Archaeological Areas Act 1979 may affect individuals or bodies corporate outside the United Kingdom, it applies to any individual whether or not he is a British subject¹⁰, and to any body corporate whether or not incorporated under the law of any part of the United Kingdom¹¹.

1 As to the meaning of 'monument' see PARA 1009.

2 References in the Ancient Monuments and Archaeological Areas Act 1979 s 53 to the 'sea bed' do not include the seashore or any other land which, although covered (intermittently or permanently) by the sea, is within Great Britain: s 53(7). As to the meaning of 'land' see PARA 1002 note 6. As to the meaning of 'Great Britain' see PARA 804 note 2.

3 As to the United Kingdom's territorial waters see **WATER AND WATERWAYS** vol 100 (2009) PARA 31. As to the meaning of 'United Kingdom' see PARA 804 note 2.

4 Ie under the Ancient Monuments and Archaeological Areas Act 1979 s 1(3): see PARA 1010.

5 Ancient Monuments and Archaeological Areas Act 1979 s 53(1). Sections 54-65 extend accordingly to any such monument which is a scheduled monument, but not otherwise: s 53(1). As to the meaning of 'scheduled monument' see PARA 1010.

6 As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4.

7 Ancient Monuments and Archaeological Areas Act 1979 s 53(2). A constable on any monument in territorial waters has all the powers, protection and privileges which he has in the area for which he acts as constable: s 53(6). As to the office of constable see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

8 Ancient Monuments and Archaeological Areas Act 1979 s 53(4).

9 Ie the Ancient Monuments and Archaeological Areas Act 1979 s 53.

10 For the purpose of enactments passed before 1983, the expression 'British subject' is defined by the British Nationality Act 1981 s 51(1): see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 66 et seq.

11 Ancient Monuments and Archaeological Areas Act 1979 s 53(5).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/A. INTRODUCTION/1005. Regulations and orders.

1005. Regulations and orders.

Any power of the Secretary of State or, in relation to Wales, the Welsh Ministers¹ to make regulations and certain orders² under the Ancient Monuments and Archaeological Areas Act 1979 is exercisable by statutory instrument³.

Any regulations or order made under the Act may make different provision for different cases to which the regulations or order apply⁴.

1 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 Ie orders under the Ancient Monuments and Archaeological Areas Act 1979 s 3 (scheduled monument consent: see PARA 1013); s 37 (exemption from restrictions as to operations in archaeological areas: see PARA 1052); s 52 (Isles of Scilly: see PARA 1002); s 61 (specification of statutory undertakers: see PARA 1051 note 6); and s 65 (commencement).

3 See the Ancient Monuments and Archaeological Areas Act 1979 s 60(2). Any statutory instrument containing any such regulations or order, other than one containing regulations under s 19 (see PARA 1037), is, in the case of a statutory instrument made by the Secretary of State, subject to annulment in pursuance of a resolution of either House of Parliament: see s 60(2). As to the procedure in relation to subordinate legislation made by the Welsh Ministers see the Government of Wales Act 2006 Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

4 Ancient Monuments and Archaeological Areas Act 1979 s 60(1).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/A. INTRODUCTION/1006. Service of documents.

1006. Service of documents.

Any notice or other document required or authorised to be served under the Ancient Monuments and Archaeological Areas Act 1979 may be served either:

- 315 (1) by delivering it to the person¹ on whom it is to be served²; or
- 316 (2) by leaving it at his usual or last known place of abode or, where he has given an address for service, at that address³; or
- 317 (3) by sending it in a pre-paid registered letter, or by the recorded delivery service, addressed to him at his usual or last known place of abode or, where he has given an address for service, at that address⁴; or
- 318 (4) in the case of an incorporated company or body, by delivering it to its secretary or clerk at its registered or principal office, or sending it in a pre-paid registered letter, or by the recorded delivery service, addressed to the secretary or clerk at that office⁵.

Where any such notice or document is required or authorised to be served on any person as being the owner⁶ or occupier of any monument⁷ or other land, it may be addressed to the 'owner' or, as the case may require, to the 'occupier' of that monument or land (describing it) without further name or description⁸; and if his usual or last known place of abode cannot be found, it may be served by being affixed conspicuously to the monument or to some object on the site of the monument⁹ or, as the case may be, on the land¹⁰. Where any notice is required to be served on an owner of land, and the land is ecclesiastical property¹¹, a like notice must be served on the Diocesan Board of Finance for the diocese in which the land is situated¹².

1 As to the meaning of 'person' see PARA 803 note 16.

2 Ancient Monuments and Archaeological Areas Act 1979 s 56(1)(a).

3 Ancient Monuments and Archaeological Areas Act 1979 s 56(1)(b).

4 Ancient Monuments and Archaeological Areas Act 1979 s 56(1)(c). A requirement to send a document by post is not confined to sending it by the Post Office postal system: see the Postal Services Act 2000 s 127(4), Sch 8 Pt 1; and **POST OFFICE**. As to the service of documents by post generally see the Interpretation Act 1978 s 7; and PARA 917 note 3.

5 Ancient Monuments and Archaeological Areas Act 1979 s 56(1)(d). As to the registered office of a company see **COMPANIES** vol 14 (2009) PARA 129.

6 Except in connection with applications for scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 2(1), or regulations made for the purpose (see PARA 1014), 'owner', in relation to any land in England and Wales, means a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let: s 61(1). 'Possession' includes receipt of rents and profits or the right to receive any rents and profits (if any): s 61(1). As to the meaning of 'land' see PARA 1002 note 6. As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4.

7 As to the meaning of 'monument' see PARA 1009.

8 Ancient Monuments and Archaeological Areas Act 1979 s 56(2)(a).

9 As to the meaning of 'site of a monument' see PARA 1009.

10 Ancient Monuments and Archaeological Areas Act 1979 s 56(2)(b).

11 As to the meaning of 'ecclesiastical property' see PARA 1002 note 6.

12 See the Ancient Monuments and Archaeological Areas Act 1979 s 51(1) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 s 14, Sch 5 para 20(a)). This provision is expressed to be without prejudice to the provisions of the Acquisition of Land Act 1981 with respect to notices served under that Act: see the Ancient Monuments and Archaeological Areas Act 1979 s 51(1); Interpretation Act 1978 s 17(2)(a). As to Diocesan Boards of Finance see **ECCLESIASTICAL LAW** vol 14 PARA 517 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/A. INTRODUCTION/1007. Information as to interests in land.

1007. Information as to interests in land.

For the purpose of enabling the Secretary of State or, in relation to Wales, the Welsh Ministers¹, or the Historic Buildings and Monuments Commission for England² or a local authority³ to exercise any function⁴ under the Ancient Monuments and Archaeological Areas Act 1979, the Secretary of State, the Welsh Ministers, the Commission or the local authority may require the occupier of any land⁵ and any person⁶ who, either directly or indirectly, receives rent in respect of any land to state in writing⁷ the nature of his interest in it, and the name and address of any other person known to him as having an interest in it, whether as a freeholder, owner⁸, mortgagee, lessee or otherwise⁹.

A person is guilty of an offence¹⁰ if:

- 319 (1) having been required under these provisions to give any information, he fails without reasonable excuse to give it¹¹;
- 320 (2) having been so required to give any information, he knowingly makes any misstatement in respect of it¹².

1 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 As to the Historic Buildings and Monuments Commission for England see PARA 803.

3 As to the meaning of 'local authority' see PARA 1002 note 9.

4 'Functions' includes powers and duties: Ancient Monuments and Archaeological Areas Act 1979 s 61(1).

5 As to the meaning of 'land' see PARA 804 note 30.

6 As to the meaning of 'person' see PARA 803 note 16.

7 As to the meaning of 'writing' see PARA 805 note 14.

8 As to the meaning of 'owner' see PARA 1006 note 6.

9 Ancient Monuments and Archaeological Areas Act 1979 s 57(1) (amended by the National Heritage Act 1983 Sch 4 para 66).

10 A person who has an enforcement function in relation to an offence under the Ancient Monuments and Archaeological Areas Act 1979 is a regulator for the purposes of the Regulatory Enforcement and Sanctions Act 2008: see **ADMINISTRATIVE LAW**.

11 See the Ancient Monuments and Archaeological Areas Act 1979 s 57(2). The penalty for such an offence is, on summary conviction, a fine not exceeding level 3 on the standard scale: s 57(2) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to offences by bodies corporate see PARA 1008.

12 See the Ancient Monuments and Archaeological Areas Act 1979 s 57(3). The penalty for such an offence is (1) on summary conviction, a fine not exceeding the statutory maximum (s 57(3)(a)); or (2) on conviction on indictment, a fine (s 57(3)(b)). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/A. INTRODUCTION/1008. Offences by corporations.

1008. Offences by corporations.

Where an offence under the Ancient Monuments and Archaeological Areas Act 1979 which has been committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of, a director¹, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against accordingly².

1 In relation to any body corporate established by or under an enactment for the purpose of carrying on under national ownership an industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, 'director' means a member of that body corporate: Ancient Monuments and Archaeological Areas Act 1979 s 58(2). 'Enactment' includes an enactment in any local or private Act, and an order, rule, regulation, byelaw or scheme made under an Act: s 61(1). As to the meaning of 'enactment' generally see PARA 805 note 5. As to bodies corporate see COMPANIES vol 14 (2009) PARA 2; CORPORATIONS vol 9(2) (2006 Reissue) PARA 1101 et seq.

2 Ancient Monuments and Archaeological Areas Act 1979 s 58(1).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1009. Meaning of 'monument'.

B. ANCIENT MONUMENTS

(A) PROTECTION OF ANCIENT MONUMENTS

1009. Meaning of 'monument'.

In the Ancient Monuments and Archaeological Areas Act 1979, 'monument' means: (1) any building, structure or work, whether above or below the surface of the land¹, and any cave or excavation²; (2) any site comprising the remains of any such building, structure or work or of any cave or excavation³; and (3) any site comprising, or comprising the remains⁴ of, any vehicle, vessel, aircraft or other moveable structure or part of it which neither constitutes nor forms part of any work which is a monument within head (1) above⁵. Any machinery attached to a monument is regarded as part of the monument if it could not be detached without being dismantled⁶.

References in the Act to a monument include references to the site of the monument in question⁷, and to a group of monuments or any part of a monument or group of monuments⁸. The site of a monument includes not only the land in or on which it is situated but also any land comprising or adjoining it which appears to the Secretary of State or, in relation to Wales, the Welsh Ministers⁹, or the Historic Buildings and Monuments Commission for England¹⁰ or a local authority¹¹, in the exercise in relation to that monument of any of their functions¹² under the Act, to be essential for the monument's support and preservation¹³. References in the Act to the site of a monument are references to the monument itself where it consists of a site¹⁴, and in any other case include references to the monument itself¹⁵.

1 As to the meaning of 'land' see PARA 804 note 30.

2 Ancient Monuments and Archaeological Areas Act 1979 s 61(1), (7)(a). Head (1) in the text does not apply to any ecclesiastical building for the time being used for ecclesiastical purposes: s 61(8).

3 Ancient Monuments and Archaeological Areas Act 1979 s 61(1), (7)(b).

4 'Remains' includes any trace or sign of the previous existence of the thing in question: Ancient Monuments and Archaeological Areas Act 1979 s 61(13).

5 Ancient Monuments and Archaeological Areas Act 1979 s 61(1), (7)(c). Head (3) in the text does not apply to a site comprising any object or its remains unless the situation of that object or its remains in that particular site is a matter of public interest (s 61(8)(a)), or to a site comprising, or comprising the remains of, any vessel which is protected by an order under the Protection of Wrecks Act 1973 s 1 (see PARA 1064), designating an area round the site as a restricted area (Ancient Monuments and Archaeological Areas Act 1979 s 61(8)(b)).

6 Ancient Monuments and Archaeological Areas Act 1979 s 61(7).

7 Ancient Monuments and Archaeological Areas Act 1979 s 61(10)(a).

8 Ancient Monuments and Archaeological Areas Act 1979 s 61(10)(b).

9 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

- 10 As to the Historic Buildings and Monuments Commission for England see PARA 803.
- 11 As to the meaning of 'local authority' see PARA 1002 note 9.
- 12 As to the meaning of 'functions' see PARA 1007 note 4.
- 13 Ancient Monuments and Archaeological Areas Act 1979 s 61(9) (amended by the National Heritage Act 1983 Sch 4 para 67).
- 14 Ancient Monuments and Archaeological Areas Act 1979 s 61(11)(a).
- 15 Ancient Monuments and Archaeological Areas Act 1979 s 61(11)(b).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1010. Schedule of monuments.

1010. Schedule of monuments.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹ must compile and maintain a schedule of monuments² in such form as he or they think fit³. Any monument for the time being included in the schedule is known as a 'scheduled monument'⁴.

On first compiling the schedule, or at any time thereafter, the Secretary of State or, as the case may be, the Welsh Ministers may include any monument which appears to him or them to be of national importance⁵. However, this power does not apply to any structure which is occupied as a dwelling house by any person other than a person employed as its caretaker or his family⁶.

The Secretary of State⁷ or the Welsh Ministers may exclude any monument from the schedule⁸, or may amend the entry in the schedule relating to any monument⁹. The Secretary of State or the Welsh Ministers must inform the owner of the inclusion of a monument in the schedule¹⁰, and must publish a list of monuments included¹¹.

An entry in the schedule recording the inclusion of a monument situated in England and Wales is a local land charge¹².

1 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 The schedule of monuments is referred to in the Ancient Monuments and Archaeological Areas Act 1979 as 'the schedule': ss 1(1), 61(1). As to the meaning of 'monument' see PARA 1009. As to the inclusion in the schedule of monuments in territorial waters see PARA 1004.

3 Ancient Monuments and Archaeological Areas Act 1979 s 1(1). On first compiling the schedule the Secretary of State had to include therein: (1) any monument included in the list last published before the commencement of the Ancient Monuments and Archaeological Areas Act 1979 under the Ancient Monuments Consolidation and Amendment Act 1913 s 12 (repealed) (Ancient Monuments and Archaeological Areas Act 1979 s 1(2)(a)); and (2) any monument in respect of which the Secretary of State had before the commencement of the Ancient Monuments and Archaeological Areas Act 1979 served notice on any person in accordance with the Ancient Monuments Act 1931 s 6(1) (repealed) of his intention to include it in a list to be published under s 12 (Ancient Monuments and Archaeological Areas Act 1979 s 1(2)(b)). As to the meaning of 'person' see PARA 803 note 16.

4 See the Ancient Monuments and Archaeological Areas Act 1979 ss 1(11), 61(1).

5 Ancient Monuments and Archaeological Areas Act 1979 s 1(3). The Secretary of State must consult the Historic Buildings and Monuments Commission for England before he includes in the schedule a monument situated in England: s 1(3) (amended by the National Heritage Act 1983 s 33(3), Sch 4 para 25). As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2. The Secretary of State has a broad discretion under the Ancient Monuments and Archaeological Areas Act 1979 s 1(3) and is under no duty to include a monument even though he accepts it is of national importance: *R v Secretary of State for the Environment, ex p Rose Theatre Trust Co* [1990] 1 QB 504, [1990] 1 All ER 754 (remains of Elizabethan theatre).

6 Ancient Monuments and Archaeological Areas Act 1979 s 1(4).

7 In the case of a monument situated in England, the Secretary of State must consult with the Historic Buildings and Monuments Commission for England before he makes an exclusion from or amendment to the

schedule: see the Ancient Monuments and Archaeological Areas Act 1979 s 1(5) (amended by the National Heritage Act 1983 Sch 4 para 25).

8 Ancient Monuments and Archaeological Areas Act 1979 s 1(5)(a).

9 Ancient Monuments and Archaeological Areas Act 1979 s 1(5)(b).

10 See the Ancient Monuments and Archaeological Areas Act 1979 ss 1(6), (6A), 1A; and PARA 1011.

11 See the Ancient Monuments and Archaeological Areas Act 1979 ss 1(7), (7A), 1A; and PARA 1011.

12 Ancient Monuments and Archaeological Areas Act 1979 s 1(9). As to local land charges see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1011. Notification of entry in the schedule of monuments.

1011. Notification of entry in the schedule of monuments.

As soon as may be after:

- 321 (1) including¹ any monument² in the schedule of monuments³;
- 322 (2) amending the entry in the schedule relating to any monument⁴; or
- 323 (3) excluding any monument from the schedule⁵,

the Secretary of State⁶, as regards a monument situated in England⁷, must inform the Historic Buildings and Monuments Commission for England⁸ of the action taken, and in a case falling within head (1) or (2) above must also send to the Commission a copy of the entry or, as the case may be, of the amended entry in the schedule relating to that monument⁹. The Secretary of State must from time to time supply the Commission with a list of the monuments situated in England and which are for the time being included in the schedule, whether as a single list or in sections containing the monuments situated in particular areas¹⁰. The Secretary of State must from time to time supply the Commission with amendments of any such list¹¹.

As soon as may be after the Commission has been informed¹² as mentioned above¹³, and in a case falling within head (1) or (2) above has received a copy of the entry or (as the case may be) of the amended entry from the Secretary of State¹⁴, the Commission must inform the owner¹⁵ and (if the owner is not the occupier) the occupier of the monument, and any local authority¹⁶ in whose area the monument is situated, of the inclusion, amendment or exclusion and, in a case falling within head (1) or (2) above, must also send to him or them a copy of the entry or (as the case may be) of the amended entry in the schedule relating to that monument¹⁷. As soon as may be after the Commission receive a list or a section of a list¹⁸ it must publish the list or section (as the case may be)¹⁹.

In relation to a monument in Wales, the Welsh Ministers²⁰ must, as soon as may be after taking any of the steps in heads (1) to (3) above, inform the owner and, if the owner is not the occupier, the occupier of the monument, and any local authority in whose area the monument is situated, of the action taken and, in a case falling within head (1) or (2) above, must also send to him or it a copy of the entry or, as the case may be, of the amended entry in the schedule relating to that monument²¹. The Welsh Ministers must from time to time publish a list of all the monuments in Wales which are for the time being included in the schedule, whether as a single list or in sections containing the monuments situated in particular areas²². The Welsh Ministers may from time to time publish amendments of any such list²³.

1 Ie under the Ancient Monuments and Archaeological Areas Act 1979 s 1(3): see PARA 1010.

2 As to the meaning of 'monument' see PARA 1009.

3 Ancient Monuments and Archaeological Areas Act 1979 s 1(6)(a). As to the schedule of monuments see PARA 1010.

4 Ancient Monuments and Archaeological Areas Act 1979 s 1(6)(b).

5 Ancient Monuments and Archaeological Areas Act 1979 s 1(6)(c).

6 As to the Secretary of State see PARA 802.

7 As to the meaning of 'England' see PARA 804 note 2.

8 As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the service of documents see PARA 1006.

9 See the Ancient Monuments and Archaeological Areas Act 1979 s 1(6A) (added by the National Heritage Act 1983 Sch 4 para 25(5)).

10 Ancient Monuments and Archaeological Areas Act 1979 s 1(7A) (added by the National Heritage Act 1983 Sch 4 para 25(7)). In the case of a list supplied in sections, all sections of the list need not be supplied simultaneously: Ancient Monuments and Archaeological Areas Act 1979 s 1(7A) (as so added).

11 Ancient Monuments and Archaeological Areas Act 1979 s 1(8A) (added by the National Heritage Act 1983 Sch 4 para 25(8)).

12 Ie as mentioned in s 1(6A): see the text to notes 6-9.

13 Ancient Monuments and Archaeological Areas Act 1979 s 1A(1)(a) (s 1A added by the National Heritage Act 1983 Sch 4 para 26).

14 Ancient Monuments and Archaeological Areas Act 1979 s 1A(1)(b) (as added: see note 13).

15 As to the meaning of 'owner' see PARA 1006 note 6.

16 As to the meaning of 'local authority' see PARA 1002 note 9.

17 Ancient Monuments and Archaeological Areas Act 1979 s 1A(1) (as added: see note 13).

18 Ie in pursuance of the Ancient Monuments and Archaeological Areas Act 1979 s 1(7A): see the text to note 10.

19 Ancient Monuments and Archaeological Areas Act 1979 s 1A(2) (as added: see note 13). The Commission must from time to time publish amendments of any list published under s 1A(2), and any such list (as amended) is evidence of the inclusion in the schedule for the time being (1) of the monuments listed (s 1A(3)(a) (as so added)); and (2) of any matters purporting to be reproduced in the list from the entries in the schedule relating to monuments listed (s 1A(3)(b) (as so added)).

20 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

21 See the Ancient Monuments and Archaeological Areas Act 1979 s 1(6) (amended by the National Heritage Act 1983 s 33(3), Sch 4 para 25).

22 Ancient Monuments and Archaeological Areas Act 1979 s 1(7) (amended by the National Heritage Act 1983 Sch 4 para 25(6)). In the case of a list published in sections, all sections of the list need not be published simultaneously: Ancient Monuments and Archaeological Areas Act 1979 s 1(7) (as so amended).

23 See the Ancient Monuments and Archaeological Areas Act 1979 s 1(8). Any such list, as amended, is evidence of the inclusion in the schedule for the time being (1) of the monuments listed (s 1(8)(a)); and (2) of any matters purporting to be produced in the list from the entries in the schedule relating to the monuments listed (s 1(8)(b)).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1012. Control of works.

1012. Control of works.

It is an offence for any person¹ to execute or cause or permit to be executed any of the following works² unless the works are authorised³ under a scheduled monument consent⁴. The works are:

- 324 (1) any works resulting in the demolition or destruction of or any damage to a scheduled monument⁵;
- 325 (2) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions to it⁶;
- 326 (3) any flooding or tipping operations on land in, on or under which there is a scheduled monument⁷.

If a person executing or causing or permitting to be executed any works to which a scheduled monument consent relates fails to comply with any condition attached to the consent he is guilty of an offence unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition⁸.

In any proceedings for an offence under these provisions it is a defence to prove that the works were urgently necessary in the interests of safety or health and that notice in writing of the need for the works was given to the Secretary of State or, as appropriate, the Welsh Ministers as soon as reasonably practicable⁹.

1 As to the meaning of 'person' see PARA 803 note 16.

2 'Works' includes operations of any description and, in particular (but without prejudice to the generality of the following definitions), flooding or tipping operations and any operations undertaken for purposes of agriculture (within the meaning of the Town and Country Planning Act 1990 (see s 336(1); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 16)), or forestry (including afforestation): Ancient Monuments and Archaeological Areas Act 1979 s 61(1) (definition amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 43(2)). 'Flooding operations' means covering land with water or any other liquid or partially liquid substance; and 'tipping operations' means tipping soil or spoil or depositing building or other materials or matter (including waste materials or refuse) on any land: Ancient Monuments and Archaeological Areas Act 1979 s 61(1). As to the meaning of 'land' see PARA 804 note 30.

3 If under the Ancient Monuments and Archaeological Areas Act 1979 Pt I (ss 1-32) or by development consent: see the Ancient Monuments and Archaeological Areas Act 1979 s 2(1) (amended by the Planning Act 2008 s 36, Sch 2 paras 16, 17). 'Development consent' means development consent under the Planning Act 2008 (see **TOWN AND COUNTRY PLANNING**): Ancient Monuments and Archaeological Areas Act 1979 s 61(1) (definition added by the Planning Act 2008 s 36, Sch 2 paras 16, 20).

Without prejudice to any other authority to execute works conferred under the Ancient Monuments and Archaeological Areas Act 1979 Pt 1, works are authorised under that Part if: (1) the Secretary of State or, in relation to Wales, the Welsh Ministers have granted scheduled monument consent for the execution of the works (see s 2(3)(a); and PARA 1013); and (2) the works are executed in accordance with the terms of the consent and of any conditions attached to the consent (s 2(3)(b)). As to the meaning of 'scheduled monument' see PARA 1010. As to the meaning of 'monument' see PARA 1009.

The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 Ancient Monuments and Archaeological Areas Act 1979 s 2(1). The penalty for an offence under s 2 is, on summary conviction, a fine not exceeding the statutory maximum (s 2(10)(a)); or (2) on conviction on indictment, a fine (s 2(10)(b)). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. As to offences by bodies corporate see PARA 1008. A person who has an enforcement function in relation to an offence under the Ancient Monuments and Archaeological Areas Act 1979 is a regulator for the purposes of the Regulatory Enforcement and Sanctions Act 2008: see **ADMINISTRATIVE LAW**.

5 Ancient Monuments and Archaeological Areas Act 1979 s 2(2)(a). In any proceedings for an offence under s 2 in relation to works within s 2(2)(a) it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid or prevent damage to the monument (s 2(7)) or that he did not know and had no reason to believe that the monument was within the area affected by the works or, as the case may be, that it was a scheduled monument (see s 2(8)). As to the standard of proof on the accused see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1370-1371.

6 Ancient Monuments and Archaeological Areas Act 1979 s 2(2)(b).

7 Ancient Monuments and Archaeological Areas Act 1979 s 2(2)(c). In any proceedings for an offence under s 2 in relation to works within s 2(2)(c) it is a defence for the accused to prove that he did not know and had no reason to believe that the monument was within the area affected by the works or, as the case may be, that it was a scheduled monument: see s 2(8).

8 Ancient Monuments and Archaeological Areas Act 1979 s 2(6). As to the penalty for such offence see note 4.

9 Ancient Monuments and Archaeological Areas Act 1979 s 2(9).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1013. Scheduled monument consent.

1013. Scheduled monument consent.

'Scheduled monument consent' means consent to carry out works¹ on a scheduled monument² granted in writing³ upon application to the Secretary of State or, in relation to Wales, the Welsh Ministers⁴. Such consent may be granted either unconditionally or subject to conditions, whether with respect to the manner in which or the persons⁵ by whom the works or any of the works are to be executed or otherwise⁶. The consent may subsequently be modified or revoked⁷. A condition attached to a scheduled monument consent may, in particular, require that a person authorised by the Historic Buildings and Monuments Commission of England⁸ in a case where the monument in question is situated in England⁹, or the Welsh Ministers or a person authorised by them in the case where the monument is situated in Wales¹⁰, be afforded the opportunity, before any works to which the consent relates are begun, to examine the monument and its site¹¹ and carry out such excavations there as appear to them to be desirable for the purposes of archaeological investigation¹².

The Secretary of State or, in relation to Wales, the Welsh Ministers may by order¹³ grant consent¹⁴ for the execution of works of any class or description specified in the order, and any such consent may apply to scheduled monuments of any class or description so specified¹⁵. The Secretary of State or the Welsh Ministers may direct¹⁶ that scheduled monument consent granted by such an order is not to apply to any scheduled monument specified in the direction, and may withdraw any such direction¹⁷.

Any scheduled monument consent (including scheduled monument consent granted by order¹⁸), except so far as it otherwise provides, enures for the benefit of the monument and of all persons for the time being interested therein¹⁹.

1 As to the meaning of 'works' see PARA 1012 note 2. As to the control of works see PARA 1012.

2 As to the meaning of 'scheduled monument' see PARA 1010. As to the meaning of 'monument' see PARA 1009.

3 As to the meaning of 'writing' see PARA 805 note 14.

4 See the Ancient Monuments and Archaeological Areas Act 1979 s 2(3)(a). References to a scheduled monument consent do not include references to a scheduled monument consent granted by an order under s 3 (see the text to notes 13-17) unless the contrary intention is expressed: s 3(5). The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

5 As to the meaning of 'person' see PARA 803 note 16.

6 Ancient Monuments and Archaeological Areas Act 1979 s 2(4).

7 See PARA 1016.

8 As to the Historic Buildings and Monuments Commission for England see PARA 803.

9 Ancient Monuments and Archaeological Areas Act 1979 s 2(5)(a) (s 2(5)(a), (b) substituted by the National Heritage Act 1983 s 33, Sch 4 para 27). As to the meaning of 'England' see PARA 804 note 2.

10 See the Ancient Monuments and Archaeological Areas Act 1979 s 2(5)(b) (as substituted: see note 9).

11 As to the meaning of 'site of a monument' see PARA 1009.

12 See the Ancient Monuments and Archaeological Areas Act 1979 s 2(5). 'Archaeological investigation' means any investigation of any land, objects or other material for the purpose of obtaining and recording any information of archaeological or historical interest and (without prejudice to the generality of the preceding provision) includes in the case of an archaeological investigation of any land: (1) any investigation for the purpose of discovering and revealing and (where appropriate) recovering and removing any objects or other material of archaeological or historical interest situated in, on or under the land (s 61(4)(a)); and (2) examining, testing, treating, recording and preserving any such objects or material discovered during the course of any excavations or inspections carried out for the purposes of any such investigation (s 61(4)(b)). As to the meaning of 'land' see PARA 804 note 30. As to powers of entry see ss 5, 6 (PARAS 1023-1024); s 26 (PARA 1041); ss 43, 44 (PARAS 1057-1059); and s 50(2) (PARA 1003).

13 As to the making of orders see PARA 1005. As to the order made see the Ancient Monuments (Class Consents) Order 1994, SI 1994/1381.

14 Before granting consent in relation to monuments of a class or description which includes monuments situated in England, the Secretary of State must consult with the Historic Buildings and Monuments Commission for England in relation to the monuments so situated: Ancient Monuments and Archaeological Areas Act 1979 s 3(1) (amended by the National Heritage Act 1983 Sch 4 para 28). As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

15 Ancient Monuments and Archaeological Areas Act 1979 s 3(1). Any conditions attached by virtue of the Ancient Monuments and Archaeological Areas Act 1979 s 2 (see the text to notes 1-12) to a scheduled monument consent granted by an order under s 3 apply in such class or description of cases as may be specified in the order: s 3(2).

16 Such a direction does not take effect until notice of it has been served on the occupier or (if there is no occupier) on the owner of the monument in question: Ancient Monuments and Archaeological Areas Act 1979 s 3(4). As to the meaning of 'owner' see PARA 1006 note 6. As to the service of notices see PARA 1006.

17 Ancient Monuments and Archaeological Areas Act 1979 s 3(3). Before making a direction in relation to a monument situated in England, or withdrawing such a direction, the Secretary of State must consult with the Historic Buildings and Monuments Commission for England: s 3(3) (amended by the National Heritage Act 1983 Sch 4 para 28).

18 If an order under the Ancient Monuments and Archaeological Areas Act 1979 s 3: see the text to notes 11-17.

19 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 1(2). As to the duration of consent see PARA 1015.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1014. Applications for scheduled monument consent.

1014. Applications for scheduled monument consent.

Regulations¹ may be made as to the form and manner in which applications for scheduled monument consent² are to be made, the particulars to be included and the information to be provided by applicants or the Secretary of State or, as the case may be, the Welsh Ministers³. The Secretary of State or the Welsh Ministers may refuse to entertain an application if it is not accompanied by one or more of the following certificates signed by or on behalf of the applicant⁴:

- 327 (1) a certificate stating that, at the beginning of the period of 21 days ending with the application, no person other than the applicant was the owner⁵ of the monument⁶;
- 328 (2) a certificate stating that the applicant has given the requisite notice of the application to all the persons other than the applicant who, at the beginning of that period, were owners of the monument⁷;
- 329 (3) a certificate stating that the applicant is unable to issue a certificate in accordance with either head (1) or head (2) above, that he has given the requisite notice of the application to such one or more of the persons mentioned in head (2) above as are specified in the certificate, that he has taken such steps as are reasonably open to him to ascertain the names and addresses of the remainder of those persons and that he has been unable to do so⁸;
- 330 (4) a certificate stating that the applicant is unable to issue a certificate in accordance with head (1) above, that he has taken such steps as are reasonably open to him to ascertain the names and addresses of the persons mentioned in head (2) above and that he has been unable to do so⁹.

The Secretary of State or the Welsh Ministers may grant scheduled monument consent in respect of all or any part of the works¹⁰ to which an application for such consent relates¹¹, but before determining whether or not to grant consent on any application, he or they must either cause a public local inquiry to be held¹², or afford to the applicant, and to any other person to whom it appears to the Secretary of State or the Welsh Ministers expedient to afford it, an opportunity of appearing before and being heard by a person appointed for the purpose¹³. The Secretary of State or the Welsh Ministers must: (a) in every case consider any representations made by any person with respect to the application before the time when he or they consider the decision on it, whether in consequence of any notice given to that person in accordance with any requirements of regulations¹⁴ or of any publicity given to the application by the Secretary of State or the Welsh Ministers, or otherwise¹⁵; (b) if any inquiry or hearing has been held, consider the report of the person who held it¹⁶. If the monument in question is situated in England, the Secretary of State must also consult with the Historic Buildings and Monuments Commission for England¹⁷.

The Secretary of State or the Welsh Ministers must serve notice of his or their decision with respect to the application on the applicant and on every person who has made representations to him or them with respect to it¹⁸. Any person aggrieved by the decision may appeal to the High Court¹⁹.

1 As to the making of regulations see PARA 1005. As to the regulations made see the Ancient Monuments (Applications for Scheduled Monument Consent) Regulations 1981, SI 1981/1301; and the Ancient Monuments (Applications for Scheduled Monument Consent) (Welsh Forms and Particulars) Regulations 2001, SI 2001/1438.

2 As to the meaning of 'scheduled monument consent' and as to applications for consent see PARA 1013. As to the meaning of 'scheduled monument' see PARA 1010. As to the meaning of 'monument' see PARA 1009.

3 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 1(1). As soon as practicable after receiving an application for scheduled monument consent in relation to a monument situated in England, the Secretary of State must send a copy of the application to the Historic Buildings and Monuments Commission for England: Sch 1 para 2A (added by the National Heritage Act 1983 s 33(3), Sch 4 para 68(2)). As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2.

The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 2(1). Any certificate issued for this purpose must contain such further particulars of the matters to which the certificate relates as may be prescribed by regulations and be in the form prescribed by regulations: Sch 1 para 2(2). See also note 1.

If any person issues a certificate which purports to comply with the requirements of Sch 1 para 2, and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 1 para 2(4) (amended by the Criminal Justice Act 1982 s 46). As to the meaning of 'person' see PARA 803 note 16. As to offences by bodies corporate see PARA 1008. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. A person who has an enforcement function in relation to an offence under the Ancient Monuments and Archaeological Areas Act 1979 is a regulator for the purposes of the Regulatory Enforcement and Sanctions Act 2008: see **ADMINISTRATIVE LAW**.

5 Regulations made for the purposes of the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 2 may make provision as to who, in the case of any monument, is to be treated as the owner for those purposes: Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 2(3). As to the meaning of 'owner' see PARA 1006 note 6.

6 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 2(1)(a).

7 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 2(1)(b). 'Requisite notice' means notice in the form prescribed by regulations made for this purpose: Sch 1 para 2(2). See also note 1. As to the service of notices see PARA 1006.

8 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 2(1)(c).

9 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 2(1)(d).

10 As to the meaning of 'works' see PARA 1012 note 2. As to the control of works see PARA 1012.

11 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 3(1).

12 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 3(2)(a). The provisions of the Local Government Act 1972 s 250(2)-(4), s 250(5) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105) apply to a public local inquiry held in relation to a monument situated in England or Wales as they apply where a minister or Secretary of State causes an inquiry to be held under s 250(1): Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 4(1).

13 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 3(2)(b).

14 ie regulations made by virtue of the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 2: see note 5.

15 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 3(3)(a).

16 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 3(3)(b).

17 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 3(3)(c) (added by the National Heritage Act 1983 Sch 4 para 68). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

18 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 3(4).

19 See the Ancient Monuments and Archaeological Areas Act 1979 s 55; and PARA 1019.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1015. Duration of scheduled monument consent.

1015. Duration of scheduled monument consent.

If no works¹ to which a scheduled monument consent² relates are executed or started within the period of five years beginning with the date on which the consent was granted, or such longer or shorter period as may be specified for the purposes of this provision in the consent, the consent ceases to have effect at the end of that period unless previously revoked³.

1 As to the meaning of 'works' see PARA 1012 note 2. As to the control of works see PARA 1012.

2 As to the meaning of 'scheduled monument consent' see PARA 1013. As to the meaning of 'scheduled monument' see PARA 1010. As to the meaning of 'monument' see PARA 1009. As to applications for consent see PARA 1014.

3 Ancient Monuments and Archaeological Areas Act 1979 s 4(1). This provision does not apply to a scheduled monument consent which provides that it will cease to have effect at the end of a specified period: s 4(2). As to the revocation of consents see PARA 1016.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1016. Modification or revocation of scheduled monument consent.

1016. Modification or revocation of scheduled monument consent.

If it appears to the Secretary of State or, in relation to Wales, the Welsh Ministers¹ expedient to do so, he or they may by a direction² modify or revoke a scheduled monument consent³ to any extent he or they consider expedient⁴. Before giving such a direction the Secretary of State or, as the case may be, the Welsh Ministers must serve a notice⁵ of proposed modification or revocation on the owner⁶ of the monument and, if the owner is not the occupier, the occupier of the monument⁷, and on any other person⁸ who in the opinion of the Secretary of State or the Welsh Ministers would be affected by the proposal⁹.

A person served with such a notice may object to the proposal¹⁰. If no objection is made, or if all objections are withdrawn, the Secretary of State or, as appropriate, the Welsh Ministers may give a direction modifying or revoking the scheduled monument consent in accordance with the notice¹¹.

1 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 Where a direction would (if given) affect a monument situated in England, the Secretary of State must consult with the Historic Buildings and Monuments Commission for England before he gives such a direction: Ancient Monuments and Archaeological Areas Act 1979 s 4(3) (amended by the National Heritage Act 1983 Sch 4 para 29). As to the meaning of 'monument' see PARA 1009. As to the meaning of 'England' see PARA 804 note 2. As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

3 As to the meaning of 'scheduled monument consent' see PARA 1013. As to the meaning of 'scheduled monument' see PARA 1010.

4 Ancient Monuments and Archaeological Areas Act 1979 s 4(3). This provision extends without prejudice to its generality, to specifying a period for the duration of a scheduled monument consent, or altering any period specified, for the purposes of s 4(1) (see PARA 1015), and to including or altering a provision that a consent will cease to have effect at the end of a specified period: s 4(4).

5 Such notice must: (1) contain a draft of the proposed modification or revocation and a brief statement of the reasons for it (Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 5(2)(a)); and (2) specify the time allowed by Sch 1 para 5(5) (see PARA 1017) for making objections to the proposed modification or revocation and the manner in which any such objections can be made (Sch 1 para 5(2)(b)). Where the effect of a proposed modification or any part of it would be to exclude any works from the scope of the consent in question or in any manner to affect the execution of any of the works to which it relates, the notice must indicate that the works affected must not be executed after the receipt of the notice or, as the case may require, must not be so executed in a manner specified in the notice: Sch 1 para 5(3). A notice of proposed revocation must indicate that the works to which the consent relates must not be executed after receipt of the notice: Sch 1 para 5(4). As to the service of notices see PARA 1006. As to the meaning of 'works' see PARA 1012 note 2. As to the control of works see PARA 1012.

6 As to the meaning of 'owner' see PARA 1006 note 6.

7 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 5(1)(a).

8 As to the meaning of 'person' see PARA 803 note 16.

9 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 5(1)(b). Where the monument in question is situated in England, the Secretary of State must consult with the Historic Buildings and Monuments Commission for England before serving a notice, and on serving such a notice he must send a copy of it to the Commission: Sch 1 para 5(1A) (added by the National Heritage Act 1983 Sch 4 para 68(4)).

10 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 5(5); and PARA 1017.

11 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 6(1).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1017. Objection to modification or revocation of scheduled monument consent.

1017. Objection to modification or revocation of scheduled monument consent.

A person¹ who has been served with a notice² that the Secretary of State or, in relation to Wales, the Welsh Ministers³ propose to give a direction modifying or revoking a scheduled monument consent⁴ may make an objection to the proposed modification or revocation at any time before the end of the period of 28 days beginning with the date on which the notice was served⁵. If any such objection is not withdrawn, then, before giving a direction, the Secretary of State or, as the case may be, the Welsh Ministers must either cause a public local inquiry to be held⁶, or afford to the objector an opportunity of appearing before and being heard by a person appointed by the Secretary of State or the Welsh Ministers for the purpose⁷. The Secretary of State or the Welsh Ministers must consider any objections duly made and not withdrawn, and consider the report of the person who held any inquiry or hearing⁸. After such consideration the Secretary of State or the Welsh Ministers may give the direction either in accordance with the notice or with any variation appearing to him or them to be appropriate⁹.

1 As to the meaning of 'person' see PARA 803 note 16.

2 Ie a notice served under the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 5(1): see PARA 1016.

3 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 Ie a direction under the Ancient Monuments and Archaeological Areas Act 1979 s 4(3): see PARA 1016. As to the meaning of 'scheduled monument consent' see PARA 1013. As to the meaning of 'scheduled monument' see PARA 1010.

5 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 5(5). As to the service of notices see PARA 1006.

6 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 6(2)(a). The provisions of the Local Government Act 1972 s 250(2)-(4), s 250(5) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105) apply to a public local inquiry held under the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 6(2)(a) as they apply where an inquiry is to be held under the Local Government Act 1972 s 250(1): see the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 9(1). The provisions of the Local Government Act 1972 s 250(4) as to costs do not apply except in so far as the Secretary of State or the Welsh Ministers are of the opinion, having regard to the object and result of the inquiry, that his or their costs should be defrayed by any party to it: see the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 9(2).

7 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 6(2)(b). If any person by whom an objection has been made avails himself of the opportunity of being heard, the Secretary of State or the Welsh Ministers must afford to each other person served with notice of the proposed modification or revocation, and to any other person to whom it appears to the Secretary of State or the Welsh Ministers expedient to afford it, an opportunity of being heard on the same occasion: Sch 1 para 6(3).

8 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 6(4).

9 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 6(5). As to the effect of a direction see PARA 1018.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1018. Effect of direction modifying or revoking a scheduled monument consent.

1018. Effect of direction modifying or revoking a scheduled monument consent.

As soon as may be after giving a direction modifying or revoking a scheduled monument consent¹, the Secretary of State or, in relation to Wales, the Welsh Ministers² must send³ a copy of the direction to each person⁴ served with notice of its proposed effect⁵ and to any other person afforded an opportunity of being heard⁶ in respect of the proposed direction⁷.

Where⁸ a notice of the proposed direction indicates that any works⁹ specified in the notice must not be executed after receipt of the notice¹⁰, or that any works specified in the notice must not be executed after receipt of the notice in a manner so specified¹¹, the works so specified must not be regarded as authorised¹² if executed or, as the case may be, executed in that manner at any time after the relevant service date¹³. However, these provisions cease to apply: (1) if within the period of 21 months¹⁴ beginning with the relevant service date the Secretary of State or the Welsh Ministers gives a direction¹⁵ with respect to the modification or revocation proposed by that notice, on the date when he or they give that direction¹⁶; (2) if within that period the Secretary of State or the Welsh Ministers serve notice on the occupier or, if there is no occupier, on the owner of the monument that he or they have determined not to give such a direction, on the date when that notice is served¹⁷; and (3) in any other case, at the end of that period¹⁸.

1 Ie a direction under the Ancient Monuments and Archaeological Areas Act 1979 s 4: see PARA 1016. As to the meaning of 'scheduled monument consent' see PARA 1013. As to the meaning of 'scheduled monument' see PARA 1010.

2 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 As to the service of notices and documents see PARA 1006.

4 As to the meaning of 'person' see PARA 803 note 16.

5 Ie in accordance with the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 5: see PARA 1016.

6 Ie in accordance with the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 6(3): see PARA 1017.

7 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 7.

8 Ie in accordance with the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 5(3), (4): see PARA 1016.

9 As to the meaning of 'works' see PARA 1012 note 2. As to the control of works see PARA 1012.

10 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 8(1), (3).

11 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 8(2).

12 Ie under the Ancient Monuments and Archaeological Areas Act 1979 Pt 1 (ss 1-32): see PARA 1012.

13 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 8(1)-(3). 'Relevant service date' means, in relation to a notice under Sch 1 para 5 (see PARA 1016) with respect to works affecting any monument, the date on which that notice was served on the occupier or (if there is no occupier) on the owner of the monument: Sch 1 para 8(5). As to the meaning of 'monument' see PARA 1009. As to the meaning of 'owner' see PARA 1006 note 6.

14 As to the meaning of 'month' see PARA 803 note 11.

15 Ie in accordance with the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 6: see PARA 1017.

16 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 8(4)(a).

17 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 8(4)(b).

18 Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 8(4)(c).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1019. Questioning the validity of action by the Secretary of State or the Welsh Ministers.

1019. Questioning the validity of action by the Secretary of State or the Welsh Ministers.

If any person is aggrieved¹:

- 331 (1) by any decision of the Secretary of State or, in relation to Wales, the Welsh Ministers² on an application for scheduled monument consent³, or
- 332 (2) the giving by him or them of any direction⁴ modifying or revoking such consent⁵,

and desires to question the validity of that action on specified grounds then, within six weeks from the relevant date⁶, he may apply to the High Court⁷. The specified grounds are: (a) that the action is not within the powers of the Ancient Monuments and Archaeological Areas Act 1979; or (b) that any of the relevant requirements⁸ have not been complied with in relation to the action⁹.

On the application the court may by interim order suspend the operation of the action questioned until the final determination of the proceedings¹⁰; and, if satisfied that the action is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it, may quash the action in whole or in part¹¹.

The validity of any such action may not otherwise be questioned in any legal proceedings whatsoever, although this does not affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State or the Welsh Ministers to take a decision on an application for scheduled monument consent¹².

1 As to the meaning of 'person' see PARA 803 note 16. As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 See the Ancient Monuments and Archaeological Areas Act 1979 s 55(3)(a). As to applications for scheduled monument consent see PARA 1014. As to the meaning of 'scheduled monument consent' see PARA 1013. As to the meaning of 'scheduled monument' see PARA 1010.

4 Ie under the Ancient Monuments and Archaeological Areas Act 1979 s 4: see PARA 1016.

5 See the Ancient Monuments and Archaeological Areas Act 1979 s 55(3)(b).

6 'Relevant date' means the date on which the action was taken: see the Ancient Monuments and Archaeological Areas Act 1979 s 55(4)(b).

7 See the Ancient Monuments and Archaeological Areas Act 1979 s 55(1)(b). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

8 'Relevant requirements' means any requirements of the Ancient Monuments and Archaeological Areas Act 1979 or of the Tribunals and Inquiries Act 1992, or of any regulations or rules made under either of those Acts which are applicable to the action: see the Ancient Monuments and Archaeological Areas Act 1979 s 55(6)(b) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 12).

9 See the Ancient Monuments and Archaeological Areas Act 1979 s 55(1)(b).

10 See the Ancient Monuments and Archaeological Areas Act 1979 s 55(5)(a).

11 See the Ancient Monuments and Archaeological Areas Act 1979 s 55(5)(b).

12 Ancient Monuments and Archaeological Areas Act 1979 s 55(7). As to judicial review of decisions expressed to be final see **JUDICIAL REVIEW** vol 61 (2010) PARA 655.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1020. Compensation for refusal of scheduled monument consent.

1020. Compensation for refusal of scheduled monument consent.

The Historic Buildings and Monuments Commission for England¹, where the monument² in question is situated in England³, or the Welsh Ministers, where the monument is situated in Wales⁴, must pay compensation⁵ to any person who has an interest in the whole or any part of a monument and who incurs expenditure or otherwise sustains any loss or damage in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent⁶ in relation to any of the following⁷:

- 333 (1) works⁸ which are reasonably necessary for carrying out any development⁹ for which planning permission¹⁰ had been granted (otherwise than by a general development order¹¹) before the time when the monument in question became a scheduled monument and was still effective at the date of the application for scheduled monument consent¹²;
- 334 (2) works which do not constitute development, or constitute development such that planning permission is granted for it by a general development order¹³; and
- 335 (3) works which are reasonably necessary for the continuation of any use¹⁴ of the monument for any purpose for which it was in use immediately before the date of the application for scheduled monument consent¹⁵.

In calculating, for the purposes of these provisions, the amount of any loss or damage consisting of depreciation of the value of an interest in land, it must be assumed that any subsequent application for scheduled monument consent in relation to works of a like description would be determined in the same way¹⁶; but if in the case of a refusal of scheduled monument consent, the Secretary of State or the Welsh Ministers, on refusing that consent, undertook to grant such consent for some other works affecting the monument in the event of an application being made in that behalf, regard must be had to that undertaking¹⁷.

1 As to the Historic Buildings and Monuments Commission for England see PARA 803.

2 As to the meaning of 'monument' see PARA 1009.

3 As to the meaning of 'England' see PARA 804 note 2.

4 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

5 References in the Ancient Monuments and Archaeological Areas Act 1979 ss 7, 8 (see PARA 1021) to compensation being paid in respect of any works are references to compensation being paid in respect of any expenditure incurred or other loss or damage sustained in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to those works: s 7(1). Any claim for compensation under the Ancient Monuments and Archaeological Areas Act 1979 must be made within the time and in the manner prescribed: s 47(1). 'Prescribed' means prescribed by regulations made by the Secretary of State or the Welsh Ministers: see s 61(1). The Ancient Monuments (Claims for Compensation) (England) Regulations 1991, SI 1991/2512, and the Ancient Monuments (Claims for Compensation) (Wales) Regulations 1991, SI 1991/2647, prescribe the forms for claiming compensation and provide for the time within which a claim is to be made

under the Ancient Monuments and Archaeological Areas Act 1979 s 7. Any question of disputed compensation under the Act must be referred to and determined by the Upper Tribunal: s 47(2) (amended by SI 2009/1307). As to the Upper Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720. The Land Compensation Act 1961 s 4 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 716-717) applies in relation to the determination of any such question, but the references in s 4 to the acquiring authority are to be construed as references to the authority by which the compensation claimed is payable under the Ancient Monuments and Archaeological Areas Act 1979: see s 47(3) (amended by SI 2009/1307).

For the purpose of assessing any compensation under the Ancient Monuments and Archaeological Areas Act 1979 s 7 or s 9 (see PARA 1022) in respect of loss or damage consisting of depreciation of the value of an interest in land (s 27(2)), the rules set out in the Land Compensation Act 1961 s 5 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 754) have effect, so far as applicable and subject to any necessary modifications, as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land: Ancient Monuments and Archaeological Areas Act 1979 s 27(1). Where an interest in land is subject to a mortgage (1) any compensation to which s 27 applies, which is payable in respect of depreciation of the value of that interest, is assessed as if the interest were not subject to the mortgage (s 27(3)(a)); (2) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest (s 27(3)(b)); (3) no compensation to which s 27 applies is payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage) (s 27(3)(c)); and (4) any compensation to which s 27 applies which is payable in respect of the interest which is subject to the mortgage must be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and must in either case be applied by him as if it were proceeds of sale (s 27(3)(d)). Any sum which under s 7, s 9, or s 46 (see PARA 1062) is payable in relation to land which is ecclesiastical property, and apart from s 51(3) would be payable to an incumbent, must be paid to Diocesan Board of Finance for the diocese in which the land is situated, to be applied for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment or Measure authorising or disposing of the proceeds of such a sale: s 51(3) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 s 14, Sch 5 para 20(a)). As to the meaning of 'land' see PARA 1002 note 6. 'Compulsory acquisition' does not include the vesting in a person by an Act of Parliament of property previously vested in some other person; and 'mortgage' includes any charge or lien on any property for securing money or money's worth: Town and Country Planning Act 1990 s 336(1) (definitions applied by the Ancient Monuments and Archaeological Areas Act 1979 s 32(1)). As to the meaning of 'person' see PARA 803 note 16. As to the meaning of 'ecclesiastical property' see PARA 1002 note 6. As to Diocesan Boards of Finance see **ECCLESIASTICAL LAW** vol 14 PARA 517 et seq. As to the meaning of 'enactment' see PARA 1008 note 1. As to legislation by Measure see **ECCLESIASTICAL LAW** vol 14 PARA 399.

6 As to the meaning of 'scheduled monument consent' see PARA 1013. As to the meaning of 'scheduled monument' see PARA 1010.

7 Ancient Monuments and Archaeological Areas Act 1979 s 7(1) (amended by the National Heritage Act 1983 Sch 4 para 33). Compensation payable under the Ancient Monuments and Archaeological Areas Act 1979 s 7 carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 641) from the date of the refusal, or grant subject to conditions, of scheduled monument consent until payment: see the Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. One or more payments on account of such compensation or interest may be made: see s 80(2). As to the recovery of compensation on subsequent grant of scheduled monument consent see the Ancient Monuments and Archaeological Areas Act 1979 s 8; and PARA 1021.

8 As to the meaning of 'works' see PARA 1012 note 2. As to the control of works see PARA 1012.

9 'Development' has the meaning given in the Town and Country Planning Act 1990 s 55, and 'develop' must be construed accordingly: see 336(1) (definition applied by the Ancient Monuments and Archaeological Areas Act 1979 s 32(1)); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 217.

10 'Planning permission' means permission under the Town and Country Planning Act 1990 Pt III (ss 55-106): see s 336(1) (definition applied by the Ancient Monuments and Archaeological Areas Act 1979 s 32(1)); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 213 et seq.

11 References in the Ancient Monuments and Archaeological Areas Act 1979 s 7 to a general development order are references to a development order made as a general order applicable (subject to such exceptions as may be specified in it) to all land: s 7(7). 'Development order' has the meaning given in the Town and Country Planning Act 1990 s 59: see s 336(1) (definition applied by the Ancient Monuments and Archaeological Areas Act 1979 s 32(1)); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 252.

12 Ancient Monuments and Archaeological Areas Act 1979 s 7(2)(a). Compensation payable in respect of any works within s 7(2)(a) is limited to compensation in respect of any expenditure incurred or other loss or damage sustained by virtue of the fact that, in consequence of the decision of the Secretary of State or, as the case may be, the Welsh Ministers, any development for which the planning permission in question was granted could not be carried out without contravening s 2(1) (see PARA 1012): s 7(3). As to applications for scheduled monument consent see PARA 1014.

13 Ancient Monuments and Archaeological Areas Act 1979 s 7(2)(b). A person is not entitled to compensation by virtue of s 7(2)(b) if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument, unless those works consist solely of operations involved in or incidental to the use of the site of the monument for the purposes of agriculture or forestry (including afforestation): s 7(4). As to the meaning of 'agriculture' see the Town and Country Planning Act 1990 s 336(1) (definition applied by the Ancient Monuments and Archaeological Areas Act 1979 s 32(1)); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 16.

14 'Use', in relation to land, does not include the use of land for the carrying out of any building or other operations on it: Town and Country Planning Act 1990 s 336(1) (definition applied by the Ancient Monuments and Archaeological Areas Act 1979 s 32(1)). 'Building operations' has the meaning given by the Town and Country Planning Act 1990 s 55: s 336(1) (definition substituted by the Planning and Compensation Act 1991 s 32, Sch 7 para 52(1), (2)(c); and applied by the Ancient Monuments and Archaeological Areas Act 1979 s 32(1)). As to building and other operations in the context of the Town and Country Planning Act 1990 see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 217-218.

15 Ancient Monuments and Archaeological Areas Act 1979 s 7(2)(c). For this purpose any use in contravention of any legal restrictions for the time being applying to the use of the monument must be disregarded: s 7(2). Where scheduled monument consent is granted subject to conditions, a person is not entitled to compensation by virtue of s 7(2)(c) unless compliance with those conditions would in effect make it impossible to use the monument for the purpose mentioned: s 7(5).

16 Ancient Monuments and Archaeological Areas Act 1979 s 7(6)(a).

17 Ancient Monuments and Archaeological Areas Act 1979 s 7(6)(b).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1021. Recovery of compensation on subsequent grant of consent.

1021. Recovery of compensation on subsequent grant of consent.

In granting or modifying a scheduled monument consent¹ in the cases listed below, the Secretary of State or, in relation to Wales, the Welsh Ministers² may do so on terms that no works³ in respect of which compensation was paid⁴ are to be executed in pursuance of the consent until the recoverable amount⁵ has been repaid to or secured to the Historic Buildings and Monuments Commission for England⁶ or secured to its satisfaction⁷ or, as the case may be, repaid to the Welsh Ministers or secured to their satisfaction⁸.

The cases are as follows:

- 336 (1) in a case where compensation was paid in consequence of the refusal of a scheduled monument consent, if the Secretary of State or the Welsh Ministers subsequently grant scheduled monument consent for the execution of all or any of the works in respect of which the compensation was paid⁹; and
- 337 (2) in a case where compensation was paid in consequence of the granting of a scheduled monument consent subject to conditions, if the Secretary of State or the Welsh Ministers subsequently so modify that consent that those conditions, or any of them, cease to apply to the execution of all or any of the works in respect of which the compensation was paid or grant a new consent in respect of all or any of those works free from conditions, or any of them¹⁰.

However, these provisions do not apply unless the compensation paid exceeded £20¹¹ and the following requirement is fulfilled¹². The requirement is that: (a) where the monument in question is situated in England¹³, the Historic Buildings and Monuments Commission for England has caused notice of the payment of compensation to be deposited¹⁴ with the council of each district or London borough in which the monument is situated or (where it is situated in the City of London, the Inner Temple or the Middle Temple) with the Common Council of the City of London¹⁵; and (b) where the monument in question is situated in Wales, the Welsh Ministers have caused such notice to be deposited with the council of each county or county borough in which the monument is situated¹⁶.

1 As to the meaning of 'scheduled monument consent' see PARA 1013. As to the meaning of 'scheduled monument' see PARA 1010. As to the modification of scheduled monument consent see PARA 1016.

2 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 As to the meaning of 'works' see PARA 1012 note 2. As to the control of works see PARA 1012.

4 Ie under the Ancient Monuments and Archaeological Areas Act 1979 s 7: see PARA 1020. As to the meaning of references to compensation being paid in respect of any works see PARA 1020 note 5.

5 'Recoverable amount' means such amount (being an amount representing the whole of the compensation previously paid or such part of it as the Secretary of State or the Welsh Ministers think fit) as the Secretary of State or the Welsh Ministers may specify in giving notice of his or their decision on the application for scheduled

monument consent or, as the case may be, in the direction modifying the consent: Ancient Monuments and Archaeological Areas Act 1979 s 8(3). Where a person who has an interest in the whole or any part of a monument is aggrieved by the amount specified by the Secretary of State or the Welsh Ministers as the recoverable amount, that person may require the determination of that amount to be referred to the Upper Tribunal, in which case the recoverable amount is such amount (being an amount representing the whole or any part of the compensation previously paid) as that tribunal may determine to be just in the circumstances of the case: s 8(4) (amended by SI 2009/1307). As to the meaning of 'monument' see PARA 1009. As to the meaning of 'person' see PARA 803 note 16. As to the meaning of 'person aggrieved' see **JUDICIAL REVIEW** vol 61 (2010) PARA 656. As to the Upper Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720.

Where any sum is recoverable under the Ancient Monuments and Archaeological Areas Act 1979 s 8 in respect of land which is ecclesiastical property the Diocesan Board of Finance for the diocese in which the land is situated may apply any money or securities held by them in the payment of that sum: s 51(4) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 s 14, Sch 5 para 20(a)). As to the meanings of 'land' and 'ecclesiastical property' see PARA 1002 note 6. As to Diocesan Boards of Finance see **ECCLESIASTICAL LAW** vol 14 PARA 517 et seq.

6 As to the Historic Buildings and Monuments Commission for England see PARA 803.

7 See the Ancient Monuments and Archaeological Areas Act 1979 s 8(3) (amended by the National Heritage Act 1983 Sch 4 para 34).

8 See the Ancient Monuments and Archaeological Areas Act 1979 s 8(3).

9 Ancient Monuments and Archaeological Areas Act 1979 s 8(1)(a).

10 Ancient Monuments and Archaeological Areas Act 1979 s 8(1)(b).

11 Ancient Monuments and Archaeological Areas Act 1979 s 8(2)(a).

12 Ancient Monuments and Archaeological Areas Act 1979 s 8(2)(b) (substituted by the National Heritage Act 1983 Sch 4 para 34).

13 As to the meaning of 'England' see PARA 804 note 2.

14 A notice deposited under the Ancient Monuments and Archaeological Areas Act 1979 s 8(2A) must specify the decision which gave rise to the right to compensation, the monument affected by the decision, and the amount of the compensation: s 8(5). A notice so deposited is a local land charge; and for the purposes of the Local Land Charges Act 1975 the council with which any such notice is deposited is treated as the originating authority as respects the charge thereby constituted: Ancient Monuments and Archaeological Areas Act 1979 s 8(6). As to local land charges see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq.

15 Ancient Monuments and Archaeological Areas Act 1979 s 8(2A)(a) (s 8(2A) added by the National Heritage Act 1983 Sch 4 para 34). As to local government areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

16 Ancient Monuments and Archaeological Areas Act 1979 s 8(2A)(c) (as added (see note 15); and amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 56(1)).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1022. Compensation where works cease to be authorised.

1022. Compensation where works cease to be authorised.

Where any works¹ affecting a scheduled monument² which were previously authorised³ cease to be so, then, if any person⁴ who has an interest in the whole or any part of the monument has incurred expenditure in carrying out works⁵ which are rendered abortive by the fact that any further works have ceased to be so authorised⁶, or has otherwise sustained loss or damage which is directly attributable to that fact⁷, the Historic Buildings and Monuments Commission for England⁸, where the monument in question is situated in England, or the Welsh Ministers⁹, where the monument in question is situated in Wales, must pay to him compensation¹⁰ in respect of that expenditure, loss or damage¹¹. However, these provisions only apply where the works cease to be authorised by virtue of: (1) the fact that a scheduled monument consent granted by order¹² ceases to apply to any scheduled monument¹³; or (2) the modification or revocation of a scheduled monument consent by a direction¹⁴; or (3) the service of a notice¹⁵ of proposed modification or revocation of a scheduled monument consent¹⁶.

1 As to the meaning of 'works' see PARA 1012 note 2. As to the control of works see PARA 1012.

2 As to the meaning of 'scheduled monument' see PARA 1010.

3 ie authorised under the Ancient Monuments and Archaeological Areas Act 1979 Pt I (ss 1-32): see PARA 1013.

4 As to the meaning of 'person' see PARA 803 note 16.

5 For this purpose any expenditure incurred in the preparation of plans for the purposes of any works, or on other similar preparatory matters, is taken to be included in the expenditure incurred in carrying out those works: Ancient Monuments and Archaeological Areas Act 1979 s 9(4). Subject to this provision, no compensation may be paid in respect of any works carried out before the grant of the scheduled monument consent in question, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent: s 9(5). As to the meaning of 'scheduled monument consent' see PARA 1013. As to the meaning of 'land' see PARA 1002 note 6.

6 Ancient Monuments and Archaeological Areas Act 1979 s 9(1)(a).

7 Ancient Monuments and Archaeological Areas Act 1979 s 9(1)(b).

8 As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2.

9 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

10 As to compensation see PARA 1020. The Ancient Monuments (Claims for Compensation) (England) Regulations 1991, SI 1991/2512, and the Ancient Monuments (Claims for Compensation) (Wales) Regulations 1991, SI 1991/2647, prescribe the forms for claiming compensation and provide for the time within which a claim is to be made under the Ancient Monuments and Archaeological Areas Act 1979 s 9.

11 Ancient Monuments and Archaeological Areas Act 1979 s 9(1) (amended by the National Heritage Act 1983 Sch 4 para 35). Compensation payable under the Ancient Monuments and Archaeological Areas Act 1979 s 9 carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see

COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date the works ceased to be authorised until payment: see the Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. One or more payments on account of such compensation or interest may be made: see s 80(2).

12 le by order under the Ancient Monuments and Archaeological Areas Act 1979 s 3: see PARA 1013.

13 Ancient Monuments and Archaeological Areas Act 1979 s 9(2)(a). This applies whether the consent ceases to apply by virtue of variation or revocation of the order or by virtue of a direction under s 3(3) (see PARA 1013): s 9(2)(a). A person is not entitled to compensation under s 9 in a case falling within s 9(2)(a) unless, on an application for scheduled monument consent for the works in question, consent is refused, or is granted subject to conditions other than those which previously applied under the order: s 9(3).

14 Ancient Monuments and Archaeological Areas Act 1979 s 9(2)(b). The direction referred to is one under s 4: see PARA 1016.

15 le in accordance with the Ancient Monuments and Archaeological Areas Act 1979 Sch 1 para 8, a notice under Sch 1 para 5: see PARA 1018.

16 Ancient Monuments and Archaeological Areas Act 1979 s 9(2)(c).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1023. Execution of works by the Secretary of State or the Welsh Ministers.

1023. Execution of works by the Secretary of State or the Welsh Ministers.

If it appears to the Secretary of State or, in relation to Wales, the Welsh Ministers¹ that any works² are urgently necessary for the preservation of a scheduled monument³, he or they may enter⁴ the site of the monument⁵ and execute those works, after giving the owner⁶ and, if the owner is not the occupier, the occupier of the monument not less than seven days' written notice⁷ of his or their intention to do so⁸. Where the Secretary of State or the Welsh Ministers execute works under this provision for repairing any damage to a scheduled monument, any compensation order previously made against a convicted person⁹ in respect of that damage in favour of any other person is enforceable, so far as not already complied with, as if it had been made in favour of the Secretary of State or the Welsh Ministers¹⁰, and any such order subsequently made in respect of that damage must be made in favour of the Secretary of State or the Welsh Ministers¹¹.

If it appears to the Secretary of State that any works are urgently necessary for the preservation of a scheduled monument situated in England¹², he may instead¹³ authorise the Historic Buildings and Monuments Commission for England¹⁴ to enter the site of the monument and execute such works as are specified in the authorisation¹⁵. In that case, the Commission may enter the site and execute the works after giving the owner and, if the owner is not the occupier, the occupier of the monument not less than seven days' written notice of its intention to do so¹⁶.

1 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 As to the meaning of 'works' see PARA 1012 note 2. As to the control of works see PARA 1012.

3 As to the meaning of 'scheduled monument' see PARA 1010.

4 As to powers of entry generally see PARAS 1058-1059.

5 As to the meaning of 'site of a monument' see PARA 1009.

6 As to the meaning of 'owner' see PARA 1006 note 6.

7 As to the meaning of 'written' see PARA 805 note 14. As to the service of notices and documents see PARA 1006.

8 Ancient Monuments and Archaeological Areas Act 1979 s 5(1).

9 If any order made under the Powers of Criminal Courts (Sentencing) Act 2000 s 130: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 375. As to the meaning of 'person' see PARA 803 note 16.

10 Ancient Monuments and Archaeological Areas Act 1979 s 5(2)(a) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 58).

11 Ancient Monuments and Archaeological Areas Act 1979 s 5(2)(b).

12 As to the meaning of 'England' see PARA 804 note 2.

13 le instead of acting as provided in the Ancient Monuments and Archaeological Areas Act 1979 s 5(1): see the text to notes 1-8.

14 As to the Historic Buildings and Monuments Commission for England see PARA 803.

15 Ancient Monuments and Archaeological Areas Act 1979 s 5(3) (s 5(3), (5) added by the National Heritage Act 1983 Sch 4 para 30). Where the Secretary of State gives such an authorisation, s 5(2) (see the text to notes 9-11) has effect with the substitution of 'Commission' for 'Secretary of State': s 5(5) (as so added).

16 Ancient Monuments and Archaeological Areas Act 1979 s 5(4) (added by the National Heritage Act 1983 Sch 4 para 30).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(A) Protection of Ancient Monuments/1024. Entry for inspection etc of scheduled monuments.

1024. Entry for inspection etc of scheduled monuments.

Any person¹ duly authorised in writing² by the Secretary of State or, in relation to Wales, the Welsh Ministers³ may at any reasonable time enter⁴ any land⁵ for any of the following purposes:

- 338 (1) inspecting any scheduled monument⁶ in, on or under the land with a view to ascertaining its condition and whether any works⁷ affecting the monument are being carried out in contravention of the legislation⁸, or whether it has been or is likely to be damaged by any such works or otherwise⁹;
- 339 (2) inspecting any scheduled monument in, on or under the land in connection with any application for scheduled monument consent¹⁰ for works affecting that monument¹¹, or any proposal by the Secretary of State or the Welsh Ministers to modify or revoke a scheduled monument consent for any such works¹²;
- 340 (3) observing the execution on the land of any works to which a scheduled monument consent relates¹³, and inspecting the condition of the land and the scheduled monument in question after the completion of any such works¹⁴, so as to ensure that the works in question are or have been executed in accordance with the terms of the consent and of any conditions attached to the consent¹⁵;
- 341 (4) in the case of land on which any works to which a scheduled monument consent relates are being carried out: inspecting the land, including any buildings¹⁶ or other structures on it, with a view to recording any matters of archaeological or historical interest¹⁷; and observing the execution of those works with a view to examining and recording any objects or other material of such interest, and recording any matters of such interest, discovered during the course of those works¹⁸.

Any person duly authorised in writing by the Welsh Ministers may enter any land in Wales¹⁹ in, on or under which a scheduled monument is situated, with the consent of the owner²⁰ and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument²¹ such notice boards and marker posts as appear to the Welsh Ministers to be desirable with a view to preserving the monument from accidental or deliberate damage²².

Any person duly authorised in writing by the Historic Buildings and Monuments Commission for England²³ may at any reasonable time enter any land in England for any of the following purposes:

- 342 (a) inspecting any scheduled monument in, on or under the land with a view to ascertaining whether any works affecting the monument have been or are being carried out in contravention of the legislation²⁴ and so enabling the Commission to decide whether to institute proceedings in England for an offence²⁵ under the legislation²⁶;
- 343 (b) observing the execution on the land of any works to which a scheduled monument consent relates²⁷, and inspecting the condition of the land and the scheduled monument in question after the completion of any such works²⁸, with a view to ascertaining whether the works in question are or have been executed in accordance with the terms of the consent and of any conditions attached to the

consent, and so enabling the Commission to decide whether to institute proceedings in England for an offence²⁹ under the legislation³⁰;

344 (c) inspecting any scheduled monument in, on or under the land in connection with any consultation made³¹ in respect of the monument³²;

345 (d) in the case of any land in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Commission to be desirable with a view to preserving the monument from accidental or deliberate damage³³.

1 As to the meaning of 'person' see PARA 803 note 16.

2 As to the meaning of 'writing' see PARA 805 note 14.

3 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 As to powers of entry see further PARAS 1058-1059.

5 As to the meaning of 'land' see PARA 1002 note 6.

6 As to the meaning of 'scheduled monument' see PARA 1010.

7 As to the meaning of 'works' see PARA 1012 note 2. As to the control of works see PARA 1012.

8 Ancient Monuments and Archaeological Areas Act 1979 s 6(1)(a). The contravention referred to is contravention of s 2(1): see PARA 1012.

9 Ancient Monuments and Archaeological Areas Act 1979 s 6(1)(b).

10 As to the meaning of 'scheduled monument consent' see PARA 1013. In the Ancient Monuments and Archaeological Areas Act 1979 s 6 scheduled monument consent includes consent granted by order under s 3 (see PARA 1013): s 6(6).

11 Ancient Monuments and Archaeological Areas Act 1979 s 6(2)(a).

12 Ancient Monuments and Archaeological Areas Act 1979 s 6(2)(b). As to modification or revocation of consent see PARAS 1016-1018.

13 Ancient Monuments and Archaeological Areas Act 1979 s 6(3)(a).

14 Ancient Monuments and Archaeological Areas Act 1979 s 6(3)(b).

15 Ancient Monuments and Archaeological Areas Act 1979 s 6(3).

16 'Building' includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building: Town and Country Planning Act 1990 s 336(1) (definition applied by the Ancient Monuments and Archaeological Areas Act 1979 s 32(1)).

17 Ancient Monuments and Archaeological Areas Act 1979 s 6(4)(a). As to the treatment and preservation of finds see s 54; and PARA 1060.

18 Ancient Monuments and Archaeological Areas Act 1979 s 6(4)(b).

19 The Ancient Monuments and Archaeological Areas Act 1979 s 6(5) does not apply to land in England: see s 6(5) (amended by the National Heritage Act 1983 s 33(3), Sch 4 para 31)). As to the meaning of 'England' see PARA 804 note 2.

20 As to the meaning of 'owner' see PARA 1006 note 6.

21 As to the meaning of 'site of a monument' see PARA 1009.

- 22 Ancient Monuments and Archaeological Areas Act 1979 s 6(5).
- 23 As to the Historic Buildings and Monuments Commission for England see PARA 803.
- 24 In contravention of the Ancient Monuments and Archaeological Areas Act 1979 s 2(1): see PARA 1012.
- 25 In an offence under the Ancient Monuments and Archaeological Areas Act 1979 s 2(1): see PARA 1012.
- 26 Ancient Monuments and Archaeological Areas Act 1979 s 6A(1) (s 6A added by the National Heritage Act 1983 s 33, Sch 4 para 32).
- 27 Ancient Monuments and Archaeological Areas Act 1979 s 6A(2)(a) (as added: see note 26). References to scheduled monument consent in s 6A include references to consent granted by order under s 3: s 6A(5) (as so added).
- 28 Ancient Monuments and Archaeological Areas Act 1979 s 6A(2)(b) (as added: see note 26).
- 29 In an offence under the Ancient Monuments and Archaeological Areas Act 1979 s 2(1): see PARA 1012.
- 30 Ancient Monuments and Archaeological Areas Act 1979 s 6A(2) (as added: see note 26).
- 31 In made under the Ancient Monuments and Archaeological Areas Act 1979 s 4(3) (see PARA 1016) or Sch 1 para 3(3)(c) (see PARA 1014).
- 32 Ancient Monuments and Archaeological Areas Act 1979 s 6A(3) (as added: see note 26).
- 33 Ancient Monuments and Archaeological Areas Act 1979 s 6A(4) (as added: see note 26).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(B) Acquisition and Guardianship of Ancient Monuments/1025. Meaning of 'ancient monument'.

(B) ACQUISITION AND GUARDIANSHIP OF ANCIENT MONUMENTS

1025. Meaning of 'ancient monument'.

'Ancient monument' means:

- 346 (1) any scheduled monument¹; and
- 347 (2) any other monument² which in the opinion of the Secretary of State or, in relation to Wales, the Welsh Ministers³ is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it⁴.

In addition, references to an 'ancient monument' in the provisions relating to the acquisition⁵ and guardianship⁶ of ancient monuments include references to any land⁷ adjoining or in the vicinity of an ancient monument which appears to the Secretary of State or the Historic Buildings and Monuments Commission for England⁸ in relation to land in England, the Welsh Ministers in relation to land in Wales, or a local authority⁹ to be reasonably required for any of the following purposes¹⁰:

- 348 (a) the maintenance of the monument or its amenities¹¹;
- 349 (b) providing or facilitating access to it¹²;
- 350 (c) the exercise of proper control or management with respect to it¹³;
- 351 (d) the storage of equipment or materials for the purpose mentioned in head (1) above¹⁴;
- 352 (e) the provision of facilities and services for the public for, or in connection with, affording public access to the monument¹⁵.

1 Ancient Monuments and Archaeological Areas Act 1979 s 61(1), (12)(a). As to the meaning of 'scheduled monument' see PARA 1010.

2 As to the meaning of 'monument' see PARA 1009.

3 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 Ancient Monuments and Archaeological Areas Act 1979 s 61(1), (12)(b).

5 Ie references in the Ancient Monuments and Archaeological Areas Act 1979 ss 10, 11: see PARAS 1026-1027.

6 Ie references in the Ancient Monuments and Archaeological Areas Act 1979 s 12: see PARA 1028.

7 As to the meaning of 'land' see PARA 1002 note 6.

8 As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2.

9 As to the meaning of 'local authority' see PARA 1002 note 9.

10 See the Ancient Monuments and Archaeological Areas Act 1979 s 15(1) (amended by the National Heritage Act 1983 Sch 4 para 41). One of the purposes in heads (1)-(5) in the text is sufficient to support the compulsory acquisition of any such land under the Ancient Monuments and Archaeological Areas Act 1979 s 10(1) (see PARA 1026) instead of the purpose there mentioned: see s 15(1). As to the meaning of 'compulsory acquisition' see PARA 1020 note 5.

11 Ancient Monuments and Archaeological Areas Act 1979 s 15(1)(a). 'Maintenance' includes fencing, repairing, and covering in, of a monument and the doing of any other act or thing which may be required for the purpose of repairing the monument or protecting it from decay or injury; and 'maintain' must be construed accordingly: s 13(7).

12 Ancient Monuments and Archaeological Areas Act 1979 s 15(1)(b).

13 Ancient Monuments and Archaeological Areas Act 1979 s 15(1)(c).

14 Ancient Monuments and Archaeological Areas Act 1979 s 15(1)(d).

15 Ancient Monuments and Archaeological Areas Act 1979 s 15(1)(e).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(B) Acquisition and Guardianship of Ancient Monuments/1026. Compulsory acquisition of ancient monuments.

1026. Compulsory acquisition of ancient monuments.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹ may acquire compulsorily² any ancient monument³ for the purpose of securing its preservation⁴. For the purpose of assessing compensation in respect of any compulsory acquisition under this provision of a monument which, immediately before the date of the compulsory purchase order, was scheduled⁵, it must be assumed that scheduled monument consent⁶ would not be granted for any works⁷ which would or might result in the demolition, destruction or removal of the monument or any part of it⁸.

1 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 As to the meaning of 'compulsory acquisition' see PARA 1020 note 5.

3 As to the meaning of 'ancient monument' see PARA 1025. References to a monument in relation to the acquisition or transfer of any monument include references to any interest in or right over the monument: Ancient Monuments and Archaeological Areas Act 1979 s 32(2). The Acquisition of Land Act 1981 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556) applies to any compulsory acquisition by the Secretary of State or the Welsh Ministers under this provision of an ancient monument: Ancient Monuments and Archaeological Areas Act 1979 s 10(2) (amended by the Acquisition of Land Act 1981 s 34, Sch 4 para 1, Sch 6 Pt I).

4 Ancient Monuments and Archaeological Areas Act 1979 s 10(1). However, the Secretary of State must consult with the Historic Buildings and Monuments Commission for England before making a compulsory purchase order: see s 10(1) (amended by the National Heritage Act 1983 s 33(3), Sch 4 para 36). As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

5 As to the meaning of 'scheduled monument' see PARA 1010.

6 As to the meaning of 'scheduled monument consent' see PARA 1013.

7 As to the meaning of 'works' see PARA 1012 note 2. As to the control of works see PARA 1012.

8 Ancient Monuments and Archaeological Areas Act 1979 s 10(4).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(B) Acquisition and Guardianship of Ancient Monuments/1027. Acquisition by agreement or gift.

1027. Acquisition by agreement or gift.

The Secretary of State (after consulting the Historic Buildings and Monuments Commission for England¹) or, in relation to Wales, the Welsh Ministers² may acquire by agreement any ancient monument³, as may any local authority⁴ in respect of any ancient monument situated in or in the vicinity of its area⁵. Similarly, the Secretary of State (after consulting the Historic Buildings and Monuments Commission for England) or, in relation to Wales, the Welsh Ministers, or any local authority may accept a gift, whether by deed or will, of any ancient monument⁶.

With the consent of the Secretary of State, the Historic Buildings and Monuments Commission for England may acquire by agreement⁷ or accept a gift, whether by deed or will⁸, of any ancient monument situated in England⁹.

Financial assistance for the acquisition of an ancient monument may be available from the National Heritage Memorial Fund¹⁰.

1 See the Ancient Monuments and Archaeological Areas Act 1979 s 11(1) (amended by the National Heritage Act 1983 Sch 4 para 37). As to the Historic Buildings and Monuments Commission for England see PARA 803.

2 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 Ancient Monuments and Archaeological Areas Act 1979 s 11(1). The Compulsory Purchase Act 1965 Pt I (ss 1-32) (so far as applicable), other than ss 4-8, 10, 31, applies in relation to any acquisition of an ancient monument under the Ancient Monuments and Archaeological Areas Act 1979 s 11(1) or s 11(2) (see the text to notes 4-5): see s 11(4); and see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 550 et seq. As to the meaning of 'ancient monument' see PARA 1025. As to the meaning of references to the acquisition of a monument see PARA 1026 note 3.

4 As to the meaning of 'local authority' see PARA 1002 note 9.

5 See the Ancient Monuments and Archaeological Areas Act 1979 s 11(2). See also note 3.

6 See the Ancient Monuments and Archaeological Areas Act 1979 s 11(3) (amended by the National Heritage Act 1983 Sch 4 para 37).

7 See the Ancient Monuments and Archaeological Areas Act 1979 s 11(1A) (added by the National Heritage Act 1983 Sch 4 para 37).

8 See the Ancient Monuments and Archaeological Areas Act 1979 s 11(3A) (added by the National Heritage Act 1983 Sch 4 para 37).

9 See the Ancient Monuments and Archaeological Areas Act 1979 s 11(1A), (3A) (both as added: see notes 7, 8). As to the meaning of 'England' see PARA 804 note 2.

10 See the National Heritage Act 1980 s 3; and PARA 816.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(B) Acquisition and Guardianship of Ancient Monuments/1028. Power to place ancient monument under guardianship.

1028. Power to place ancient monument under guardianship.

A person¹ who has a sufficient interest² in an ancient monument situated in England may, with the consent of the Secretary of State³ constitute the Secretary of State, or with the consent of the Historic Buildings and Monuments Commission for England⁴ constitute the Commission, by deed guardian of the monument⁵. Likewise, a person who has a sufficient interest in an ancient monument situated in Wales may, with the consent of the Welsh Ministers⁶, constitute the Welsh Ministers by deed guardian of the monument⁷; and a person who has any such interest in an ancient monument situated in either England or Wales may, with the consent of any local authority⁸ in or in the vicinity of whose area the monument is situated, constitute that authority by deed guardian of the monument⁹. The Secretary of State, the Commission, the Welsh Ministers or a local authority must not consent to become guardians of any structure which is occupied as a dwelling house by any person other than a person employed as the caretaker thereof or his family¹⁰.

A person who is not the occupier of an ancient monument may not establish guardianship of the monument under these provisions unless the occupier is also a party to the deed executed for these purposes¹¹; and any person who has an interest in an ancient monument may be a party to any such deed in addition to the person establishing the guardianship of the monument and (where the latter is not the occupier) the occupier¹².

A guardianship deed¹³ relating to any ancient monument situated in England and Wales is a local land charge¹⁴. Every person deriving title to any ancient monument from, through or under any person who has executed a guardianship deed is bound by the guardianship deed unless he derives title by virtue of any disposition made by the person who executed the deed before the date of the deed¹⁵.

Except as provided by the Ancient Monuments and Archaeological Areas Act 1979, any person who has any estate or interest in a monument under guardianship has the same right and title to, and estate or interest in, the monument in all respects as if the Secretary of State, the Commission, the Welsh Ministers or the local authority in question (as the case may be) had not become guardians of the monument¹⁶.

1 As to the meaning of 'person' see PARA 803 note 16.

2 Ie an interest of any description mentioned in the Ancient Monuments and Archaeological Areas Act 1979 s 12(3): see s 12(1)(a). The interests in an ancient monument situated in England and Wales which qualify a person to establish guardianship of the monument under s 12(1), (1A) or (2) (see the text to notes 3-9) are the following (s 12(3) amended by the National Heritage Act 1983 s 33, Sch 4 para 38(4)): (1) an estate in fee simple absolute in possession (Ancient Monuments and Archaeological Areas Act 1979 s 12(3)(a)); (2) a leasehold estate or interest in possession, being an estate or interest for a term of years of which not less than 45 are unexpired or (as the case may be) renewable for a term of not less than 45 years (s 12(3)(b)); and (3) an interest in possession for his own life or the life of another, or for lives (whether or not including his own), under any existing or future trust of land under which the estate or interest for the time being subject to the trust falls within head (1) or (2) above (s 12(3)(c) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 17(a)). As to the meaning of 'ancient monument' see PARA 1025. As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4. 'Trust of land' and 'trustees of land' have the same meanings as in the Trusts of Land and Appointment of Trustees Act 1996 (see TRUSTS vol 48 (2007 Reissue) PARAS 605, 724): Interpretation Act 1978 s 5, Sch 1 (definition added by the Trusts of Land and Appointment of Trustees Act 1996 s 25(4), Sch 3 para 16).

3 The Secretary of State must consult with the Historic Buildings and Monuments Commission for England before he so consents: see the Ancient Monuments and Archaeological Areas Act 1979 s 12(1) (amended by the National Heritage Act 1983 s 33, Sch 4 para 38(2)). As to the Secretary of State see PARA 802. As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

4 Such consent may only be given after obtaining the consent of the Secretary of State: see the Ancient Monuments and Archaeological Areas Act 1979 s 12(1A) (added by the National Heritage Act 1983 s 33, Sch 4 para 38(3)).

5 See the Ancient Monuments and Archaeological Areas Act 1979 s 12(1), (1A) (as added: see note 4). As to the powers of limited owners for the purposes of s 12 see PARA 1034. Objects which are or have been kept in a building of which the Secretary of State or the Welsh Ministers are guardians under the Ancient Monuments and Archaeological Areas Act 1979 may be accepted in satisfaction of inheritance tax: see PARA 1107.

6 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802.

7 See the Ancient Monuments and Archaeological Areas Act 1979 s 12(1).

8 As to the meaning of 'local authority' see PARA 1002 note 9.

9 See the Ancient Monuments and Archaeological Areas Act 1979 s 12(2).

10 Ancient Monuments and Archaeological Areas Act 1979 s 12(10) (amended by the National Heritage Act 1983 s 33, Sch 4 para 38(4), (6)).

11 Ancient Monuments and Archaeological Areas Act 1979 s 12(4) (amended by the National Heritage Act 1983 s 33, Sch 4 para 38(4), (6)).

12 Ancient Monuments and Archaeological Areas Act 1979 s 12(5).

13 In relation to any monument of which the Secretary of State, the Commission, the Welsh Ministers or any local authority has been constituted guardian under the Ancient Monuments and Archaeological Areas Act 1979, references in ss 13-65 to the 'guardianship deed' are references to the deed executed for the purposes of s 12(1), (1A) or (2) (see the text to notes 1-9) (as the case may be): s 12(6) (amended by the National Heritage Act 1983 s 33, Sch 4 para 38(5)).

14 Ancient Monuments and Archaeological Areas Act 1979 s 12(7). As to local land charges see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq.

15 See the Ancient Monuments and Archaeological Areas Act 1979 s 12(9)(a).

16 Ancient Monuments and Archaeological Areas Act 1979 s 12(11) (amended by the National Heritage Act 1983 s 33, Sch 4 para 38(7)). As to the effect of guardianship generally see PARA 1029. As to the termination of guardianship see PARA 1030.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(B) Acquisition and Guardianship of Ancient Monuments/1029. Effect of guardianship.

1029. Effect of guardianship.

The Secretary of State¹, the Welsh Ministers², the Historic Buildings and Monuments Commission for England³ and any local authority⁴ are under a duty to maintain⁵ any monument⁶ which is under their guardianship by virtue of the Ancient Monuments and Archaeological Areas Act 1979⁷; and, subject to any provision to the contrary in the guardianship deed⁸, have full control and management of any such monument⁹. With a view to fulfilling their duty to maintain a monument of which they are the guardians, the Secretary of State, the Welsh Ministers, the Commission and any local authority have power, subject to the guardianship deed¹⁰, to do all such things as may be necessary for the maintenance of the monument and for the exercise by them of proper control and management with respect to the monument¹¹.

Without prejudice to the generality of the preceding provisions, the Secretary of State, the Welsh Ministers, the Commission or any local authority has power, subject to the guardianship deed¹², to: (1) make any examination of a monument which is under their guardianship¹³; (2) open up any such monument or make excavations in it for the purpose of examination or otherwise¹⁴; and (3) remove the whole or any part of any such monument to another place for the purpose of preserving it¹⁵. The Secretary of State, the Welsh Ministers, the Commission or local authority may at any reasonable time enter the site of a monument¹⁶ which is under their guardianship for the purpose of exercising any of the powers under these provisions in relation to the monument, and may authorise any other person¹⁷ to exercise any of those powers on their behalf¹⁸.

1 As to the Secretary of State see PARA 802.

2 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 As to the Historic Buildings and Monuments Commission for England see PARA 803.

4 As to the meaning of 'local authority' see PARA 1002 note 9.

5 As to the meaning of 'maintain' see PARA 1025 note 11.

6 A monument under guardianship will be an ancient monument: see the Ancient Monuments and Archaeological Areas Act 1979 s 12; and PARA 1028. As to the meaning of 'ancient monument' see PARA 1025.

7 Ancient Monuments and Archaeological Areas Act 1979 s 13(1) (amended by the National Heritage Act 1983 Sch 4 para 39). As to guardianship see PARA 1028.

8 See the Ancient Monuments and Archaeological Areas Act 1979 s 13(6). As to the meaning of 'guardianship deed' see PARA 1028 note 13.

9 Ancient Monuments and Archaeological Areas Act 1979 s 13(2) (amended by the National Heritage Act 1983 Sch 4 para 39).

10 See the Ancient Monuments and Archaeological Areas Act 1979 s 13(6).

11 Ancient Monuments and Archaeological Areas Act 1979 s 13(3) (amended by the National Heritage Act 1983 Sch 4 para 39).

12 See the Ancient Monuments and Archaeological Areas Act 1979 s 13(4), (6) (s 13(4) amended by the National Heritage Act 1983 Sch 4 para 39).

13 Ancient Monuments and Archaeological Areas Act 1979 s 13(4)(a). As to the preservation of finds see PARA 1060.

14 Ancient Monuments and Archaeological Areas Act 1979 s 13(4)(b).

15 Ancient Monuments and Archaeological Areas Act 1979 s 13(4)(c).

16 As to the meaning of 'site of a monument' see PARA 1009.

17 As to the meaning of 'person' see PARA 803 note 16.

18 Ancient Monuments and Archaeological Areas Act 1979 s 13(5) (amended by the National Heritage Act 1983 Sch 4 para 39). As to powers of entry see further PARAS 1058-1059.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(B) Acquisition and Guardianship of Ancient Monuments/1030. Termination of guardianship.

1030. Termination of guardianship.

Where the Secretary of State¹, the Welsh Ministers², the Historic Buildings and Monuments Commission for England³ or a local authority⁴ has become guardian of any monument⁵, they may by agreement⁶ made with the persons who are for the time being immediately affected by the operation of the guardianship deed⁷, exclude any part of the monument from guardianship⁸ or renounce guardianship of the monument⁹; but except as provided above, the monument remains under guardianship, unless it is acquired by its guardians, until an occupier of the monument who is entitled to terminate the guardianship¹⁰ gives notice in writing¹¹ to that effect to the guardians of the monument¹².

Neither the Secretary of State, the Welsh Ministers, the Commission nor a local authority may enter into any such agreement unless satisfied with respect to the part of the monument or, as the case may be, with respect to the whole of the monument in question¹³ that satisfactory arrangements have been made for ensuring its preservation after termination of the guardianship¹⁴, or that it is no longer practicable to preserve it, whether because of the cost of preserving it or otherwise¹⁵.

1 As to the Secretary of State see PARA 802.

2 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 As to the Historic Buildings and Monuments Commission for England see PARA 803.

4 As to the meaning of 'local authority' see PARA 1002 note 9.

5 A monument in guardianship will be an ancient monument: see the Ancient Monuments and Archaeological Areas Act 1979 s 12; and PARA 1028. As to the meaning of 'ancient monument' see PARA 1025.

6 A local authority must consult with the Secretary of State or, as appropriate, the Welsh Ministers before entering into any such agreement; the Secretary of State must consult with the Historic Buildings and Monuments Commission for England before entering into any such agreement; and the Commission must consult with the Secretary of State before entering into any such agreement: see the Ancient Monuments and Archaeological Areas Act 1979 s 14(2) (amended by the National Heritage Act 1983 Sch 4 para 40). Any agreement under the Ancient Monuments and Archaeological Areas Act 1979 s 14 relating to a monument in England and Wales must be made under seal: s 14(4). As to the meaning of 'England' see PARA 804 note 2. As to deeds under seal see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 27 et seq.

7 For these purposes a person is to be taken to be immediately affected by the operation of a guardianship deed relating to any land if he is bound by the deed and is in possession or occupation of the land: see the Ancient Monuments and Archaeological Areas Act 1979 s 61(3). As to the meaning of 'person' see PARA 803 note 16. As to the meaning of 'guardianship deed' see PARA 1028 note 13. As to the meaning of 'land' see PARA 1002 note 6. As to the meaning of 'possession' see PARA 1006 note 6.

8 Ancient Monuments and Archaeological Areas Act 1979 s 14(1)(a).

9 Ancient Monuments and Archaeological Areas Act 1979 s 14(1)(b).

10 An occupier of a monument is entitled to terminate the guardianship of the monument if: (1) he has any interest in the monument which would qualify him to establish guardianship of the monument under the Ancient

Monuments and Archaeological Areas Act 1979 s 12 (see PARA 1028) (s 14(1)(a)); and (2) he is not bound by the guardianship deed (s 14(1)(b)).

11 As to the meaning of 'writing' see PARA 805 note 14. As to the service of notices and documents see PARA 1006.

12 Ancient Monuments and Archaeological Areas Act 1979 s 14(1) (amended by the National Heritage Act 1983 Sch 4 para 40).

13 Ancient Monuments and Archaeological Areas Act 1979 s 14(3) (amended by the National Heritage Act 1983 Sch 4 para 40).

14 Ancient Monuments and Archaeological Areas Act 1979 s 14(3)(a).

15 Ancient Monuments and Archaeological Areas Act 1979 s 14(3)(b).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(B) Acquisition and Guardianship of Ancient Monuments/1031. Acquisition and guardianship of land in the vicinity of an ancient monument.

1031. Acquisition and guardianship of land in the vicinity of an ancient monument.

Where it appears to the Secretary of State¹, the Welsh Ministers², the Historic Buildings and Monuments Commission for England³ or a local authority⁴ that land adjoining or in the vicinity of an ancient monument⁵ is reasonably required for any of certain ancillary purposes⁶, that land may be acquired⁷ or taken into guardianship⁸ either at the same time as the monument or subsequently⁹.

The Secretary of State, the Welsh Ministers, the Commission and any local authority have full control and management of any land which is under their guardianship¹⁰ after being taken into guardianship by virtue of these provisions for a purpose relating to an ancient monument, and have power to do all such things as may be necessary¹¹ for: (1) the exercise by them of proper control and management with respect to the land¹²; and (2) the use of the land for any of the ancillary purposes¹³. For the purpose of exercising such powers, the Secretary of State, Welsh Ministers, Commission or any local authority may at any reasonable time enter any land under their guardianship and may authorise any other person¹⁴ to do so and exercise that power on their behalf¹⁵.

The provisions as to the termination of guardianship¹⁶ apply in relation to any land taken into guardianship by virtue of these provisions for any purpose relating to an ancient monument as they apply in relation to a monument, but, apart from any termination of guardianship by virtue of those provisions, any such land also ceases to be under guardianship if the monument in question ceases to be under guardianship otherwise than by virtue of being acquired by its guardian or ceases to exist¹⁷.

1 As to the Secretary of State see PARA 802.

2 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 Land may be acquired, or taken into guardianship, by the Commission by virtue of the Ancient Monuments and Archaeological Areas Act 1979 s 15 only if the land is situated in England: see s 15(1) (amended by the National Heritage Act 1983 s 33, Sch 4 para 42). As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'land' see PARA 1002 note 6.

4 As to the meaning of 'local authority' see PARA 1002 note 9.

5 As to the meaning of 'ancient monument' see PARA 1025.

6 Ie the purposes specified in the Ancient Monuments and Archaeological Areas Act 1979 s 15(1)(a)-(e): see PARA 1025.

7 As to the acquisition of ancient monuments see PARAS 1026-1027.

8 As to guardianship of ancient monuments see PARA 1028.

9 See the Ancient Monuments and Archaeological Areas Act 1979 s 15(1), (2) (s 15(1), (6) amended by the National Heritage Act 1983 s 33, Sch 4 para 41). References in the Ancient Monuments and Archaeological

Areas Act 1979, in relation to any monument of which the Secretary of State, the Welsh Ministers, the Commission or a local authority is the owner or guardian by virtue of the Act, to land associated with that monument (or to associated land) are references to any land acquired or taken into guardianship by virtue of s 15 for a purpose relating to that monument, or appropriated for any such purpose under a power conferred by any other enactment: ss 15(6) (as so amended), 61(6). In relation to any monument in territorial waters which is under the ownership or guardianship of the Secretary of State, the Welsh Ministers, the Commission or any local authority by virtue of the Ancient Monuments and Archaeological Areas Act 1979, references in the Act to land associated with the monument (or to associated land) include references to any part of the sea bed occupied by the Secretary of State, the Welsh Ministers, the Commission or a local authority for any such purpose relating to the monument as is mentioned in s 15(1): s 53(3) (amended by the National Heritage Act 1983 s 33, Sch 4 para 64). For the purposes of the Ancient Monuments and Archaeological Areas Act 1979 Pt I (ss 1-32) the Secretary of State, the Welsh Ministers, the Commission or a local authority is the owner of a monument by virtue of the Act if the Secretary of State, Welsh Ministers, Commission or local authority (as the case may be) has acquired it under s 10 (see PARA 1026), s 11 (see PARA 1027) or s 21 (see PARA 1035): s 32(3) (amended by the National Heritage Act 1983 s 33, Sch 4 para 53). As to the meaning of 'enactment' see PARA 1008 note 1. As to monuments in territorial waters see PARA 1004.

10 le by virtue of the Ancient Monuments and Archaeological Areas Act 1979.

11 Ancient Monuments and Archaeological Areas Act 1979 s 15(3) (amended by the National Heritage Act 1983 s 33, Sch 4 para 41).

12 Ancient Monuments and Archaeological Areas Act 1979 s 15(3)(a).

13 Ancient Monuments and Archaeological Areas Act 1979 s 15(3)(b). The ancillary purposes are those mentioned in s 15(1)(a)-(e): see PARA 1025.

14 As to the meaning of 'person' see PARA 803 note 16.

15 Ancient Monuments and Archaeological Areas Act 1979 s 15(4) (amended by the National Heritage Act 1983 Sch 4 para 41). As to powers of entry see PARAS 1058-1059.

16 le the Ancient Monuments and Archaeological Areas Act 1979 s 14(1), (2): see PARA 1030.

17 Ancient Monuments and Archaeological Areas Act 1979 s 15(5).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(B) Acquisition and Guardianship of Ancient Monuments/1032. Acquisition of easements and other rights.

1032. Acquisition of easements and other rights.

The Secretary of State¹ or, in relation to Wales, the Welsh Ministers² may acquire, by agreement³ or compulsorily⁴, over land adjoining or in the vicinity of any monument⁵ which is under his or their ownership⁶ any easement⁷ which appears to him or them to be necessary: (1) for any of the purposes⁸ relating to the monument for which such land may be acquired or taken into guardianship⁹; or (2) for the use¹⁰ of any land associated with that monument¹¹ for any of those purposes¹². Similarly, the Historic Buildings and Monuments Commission for England, in respect of land which is situated in England, and a local authority¹³ may by agreement acquire over land which adjoins or is in the vicinity of any monument under its ownership¹⁴ any such easement as the Secretary of State or the Welsh Ministers may acquire under the above provisions¹⁵.

The Secretary of State, the Welsh Ministers, the Commission or any local authority may acquire, for the benefit of any monument or land under their guardianship¹⁶, a right of any description which they would be authorised to acquire under any of the above provisions if the monument or land was under their ownership by virtue of the Ancient Monuments and Archaeological Areas Act 1979, and those provisions apply accordingly in any such case¹⁷. Any such right which is acquired by agreement under these provisions for a purpose relating to any monument under guardianship, or for the use of any land associated with any such monument for any purpose relating to that monument:

- 353 (a) subject to any provision to the contrary in the agreement under which it was acquired, may be revoked by the grantor¹⁸; and
- 354 (b) may be revoked by any successor in title of the grantor as respects any of the land over which it is exercisable in which he has an interest¹⁹,

if the monument ceases to be under guardianship otherwise than by virtue of being acquired by its guardians or ceases to exist²⁰.

1 Where the land in question is situated in England, the Secretary of State must consult with the Historic Buildings and Monuments Commission for England before entering into the agreement or making the compulsory purchase order (as the case may be): see the Ancient Monuments and Archaeological Areas Act 1979 s 16(1) (amended by the National Heritage Act 1983 s 33, Sch 4 para 42). As to the meaning of 'land' see PARA 1002 note 6. As to the meaning of 'England' see PARA 804 note 2. As to the Secretary of State see PARA 802. As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

2 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 The Compulsory Purchase Act 1965 Pt I (ss 1-32) (so far as applicable), other than ss 4-8, 10, 31, applies in relation to any acquisition by agreement under the Ancient Monuments and Archaeological Areas Act 1979 s 16 of any easement over land in England and Wales: s 16(11). See further **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 550. As to the powers of limited owners for the purposes of s 16 see PARA 1034.

4 As to the meaning of 'compulsory acquisition' see PARA 1020 note 5. The Acquisition of Land Act 1981 applies to any compulsory acquisition by the Secretary of State or the Welsh Ministers under the Ancient Monuments and Archaeological Areas Act 1979 s 16 of any easement over land in England and Wales: s 16(9) (amended by the Acquisition of Land Act 1981 s 34, Sch 4 para 1, Sch 6 Pt I). See generally **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 501 et seq.

5 Any such monument will be an ancient monument: see the Ancient Monuments and Archaeological Areas Act 1979 ss 10, 11; and PARAS 1026-1027. As to the meaning of 'ancient monument' see PARA 1025.

6 Ie by virtue of the Ancient Monuments and Archaeological Areas Act 1979. As to the meaning of 'owner' in this context see PARA 1031 note 9.

7 The power of acquiring an easement under the Ancient Monuments and Archaeological Areas Act 1979 s 16(1), (1A) or (2) (see the text to notes 13-15) includes power to acquire any such easement by the grant of a new right: s 16(3) (amended by the National Heritage Act 1983 Sch 4 para 42).

8 Ie any of the purposes mentioned in the Ancient Monuments and Archaeological Areas Act 1979 s 15(1): see PARA 1025.

9 See the Ancient Monuments and Archaeological Areas Act 1979 s 16(1)(a).

10 As to the meaning of 'use' see PARA 1020 note 14.

11 As to the meaning of 'land associated with the monument' see PARA 1031 note 9.

12 Ancient Monuments and Archaeological Areas Act 1979 s 16(1)(b).

13 As to the meaning of 'local authority' see PARA 1002 note 9.

14 Ie by virtue of the Ancient Monuments and Archaeological Areas Act 1979. See also note 7.

15 See the Ancient Monuments and Archaeological Areas Act 1979 s 16(1A), (2) (s 16(1A) added by the National Heritage Act 1983 Sch 4 para 42).

16 Ie by virtue of the Ancient Monuments and Archaeological Areas Act 1979. As to guardianship see PARA 1028.

17 Ancient Monuments and Archaeological Areas Act 1979 s 16(4) (amended by the National Heritage Act 1983 Sch 4 para 42). Any such right is treated for the purposes of its acquisition under the Ancient Monuments and Archaeological Areas Act 1979 s 16 and in all other respects as if it were a legal easement (s 16(5)(a)), and may be enforced by the guardians for the time being of the monument or land for whose benefit it was acquired as if they were the absolute owner in possession of that monument or land (s 16(5)(b)). Any such right is a local land charge: see s 16(8)(a). As to local land charges see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq.

18 Ancient Monuments and Archaeological Areas Act 1979 s 16(6)(a).

19 Ancient Monuments and Archaeological Areas Act 1979 s 16(6)(b).

20 Ancient Monuments and Archaeological Areas Act 1979 s 16(6). As to the termination of guardianship see PARA 1030.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(B) Acquisition and Guardianship of Ancient Monuments/1033. Agreements concerning ancient monuments and land in their vicinity.

1033. Agreements concerning ancient monuments and land in their vicinity.

The Secretary of State¹ or the Historic Buildings and Monuments Commission for England² in the case of an ancient monument³ situated in England⁴, and the Welsh Ministers in the case of an ancient monument situated in Wales⁵, may enter into an agreement with the occupier⁶ of an ancient monument or any land adjoining or in the vicinity of an ancient monument⁷, and a local authority⁸ may enter into an agreement with the occupier of any ancient monument situated in or in the vicinity of its area or with the occupier of any land adjoining or in the vicinity of any such ancient monument⁹, for all or any of the following purposes with respect to the monument or land in question:

- 355 (1) the maintenance¹⁰ and preservation of the monument and its amenities¹¹;
- 356 (2) the carrying out of any such work, or the doing of any such other thing, in relation to the monument or land as may be specified in the agreement¹²;
- 357 (3) public access to the monument or land and the provision of facilities and information or other services for the use of the public in that connection¹³;
- 358 (4) restricting the use¹⁴ of the monument or land¹⁵;
- 359 (5) prohibiting in relation to the monument or land the doing of any such thing as may be so specified¹⁶; and
- 360 (6) the making by the Secretary of State, the Welsh Ministers, the Commission or the local authority, as the case may be, of payments in such manner, of such amounts and on such terms as may be so specified, and whether for or towards the cost of any work provided for under the agreement or in consideration of any restriction, prohibition or obligation accepted by any other party to it¹⁷.

The agreement may also contain such incidental and consequential provisions as appear to the Secretary of State, the Welsh Ministers, the Commission or the local authority, as the case may be, to be necessary or expedient¹⁸.

1 As to the Secretary of State see PARA 802.

2 As to the Historic Buildings and Monuments Commission for England see PARA 803.

3 As to the meaning of 'ancient monument' see PARA 1025. References to an ancient monument in the Ancient Monuments and Archaeological Areas Act 1979 s 17(1A), (3) (see note 6) so far as it applies for the purposes of s 17(1A), is to be construed as if the reference in s 61(12)(b) (see PARA 1025) to the Secretary of State were to the Historic Buildings and Monuments Commission for England: s 17(9) (added by the National Heritage Act 1983 s 33, Sch 4 para 43).

4 References in the Ancient Monuments and Archaeological Areas Act 1979 s 17 to an ancient monument situated in England include any such monument situated in, on or under the seabed within the seaward limits of the United Kingdom territorial waters adjacent to England; and an order under the National Heritage Act 1983 s 33(10) (orders determining limits of waters adjacent to England: see PARA 804 note 2) applies for these purposes as it applies for the purposes of s 33(9): Ancient Monuments and Archaeological Areas Act 1979 s 17(10) (added by the National Heritage Act 2002 s 2(2)). As to the meanings of 'England' and 'United Kingdom' see PARA 804 note 2. As to United Kingdom territorial waters see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

5 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable

by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

6 In addition to the occupier, any person who has an interest in an ancient monument or in any land adjoining or in the vicinity of an ancient monument may be a party to an agreement under the Ancient Monuments and Archaeological Areas Act 1979 s 17: s 17(3). See also note 3. As to the meaning of 'person' see PARA 803 note 16. As to the meaning of 'land' see PARA 1002 note 6. As to the power of a limited owner to enter into an agreement see PARA 1034.

7 Ancient Monuments and Archaeological Areas Act 1979 s 17(1), (1A) (s 17(1A) added by the National Heritage Act 1983 Sch 4 para 43). Nothing in any agreement to which the Secretary of State or the Welsh Ministers are a party is to be construed as operating as a scheduled monument consent: Ancient Monuments and Archaeological Areas Act 1979 s 17(8). As to the meaning of 'scheduled monument consent' see PARA 1013.

8 As to the meaning of 'local authority' see PARA 1002 note 9.

9 Ancient Monuments and Archaeological Areas Act 1979 s 17(2). See also note 6.

10 As to the meaning of 'maintenance' see PARA 1025 note 11.

11 Ancient Monuments and Archaeological Areas Act 1979 s 17(4)(a).

12 Ancient Monuments and Archaeological Areas Act 1979 s 17(4)(b).

13 Ancient Monuments and Archaeological Areas Act 1979 s 17(4)(c). As to public access to monuments under public control see s 19; and PARA 1037.

14 As to the meaning of 'use' see PARA 1020 note 14.

15 Ancient Monuments and Archaeological Areas Act 1979 s 17(4)(d). The Law of Property Act 1925 s 84 (power to discharge or modify restrictive covenants: see **EQUITY** vol 16(2) (Reissue) PARA 630 et seq) does not apply to an agreement under the Ancient Monuments and Archaeological Areas Act 1979 s 17: s 17(7) (substituted by the Title Conditions (Scotland) Act 2003 s 128(1), Sch 14 para 8; and amended by SI 2009/1307).

16 Ancient Monuments and Archaeological Areas Act 1979 s 17(4)(e).

17 Ancient Monuments and Archaeological Areas Act 1979 s 17(4)(f) (amended by the National Heritage Act 1983 Sch 4 para 43).

18 Ancient Monuments and Archaeological Areas Act 1979 s 17(4) (amended by the National Heritage Act 1983 Sch 4 para 43). Where an agreement expressly provides that the agreement as a whole or any restriction, prohibition or obligation arising under it is to be binding on the successors of any party to the agreement (but not otherwise), then, as respects any monument or land in England and Wales, every person deriving title to the monument or land in question from, through or under that party is bound by the agreement, or, as the case may be, by that restriction, prohibition or obligation, unless he derives title by virtue of any disposition made by that party before the date of the agreement: Ancient Monuments and Archaeological Areas Act 1979 s 17(5).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(B) Acquisition and Guardianship of Ancient Monuments/1034. Powers of limited owners.

1034. Powers of limited owners.

Notwithstanding that he is a limited owner¹ of the land, a person² may establish guardianship of any land³ or join in executing a guardianship deed⁴. A person who is a limited owner of the land may also: (1) grant any easement, servitude or other right over land which the Secretary of State⁵, the Welsh Ministers⁶, the Historic Buildings and Monuments Commission for England⁷ or any local authority⁸ is authorised⁹ to acquire¹⁰; or (2) enter into an agreement¹¹ with respect to any land¹².

1 For this purpose: (1) a body corporate or corporation sole is a limited owner of any land in which it has an interest (Ancient Monuments and Archaeological Areas Act 1979 s 18(3)(a)); and (2) any other person is a limited owner of land in which he has an interest only if he holds that interest (a) as tenant for life or statutory owner within the meaning of the Settled Land Act 1925 (see SETTLEMENTS vol 42 (Reissue) PARAS 671, 766) (Ancient Monuments and Archaeological Areas Act 1979 s 18(3)(b), (4)(a)); (b) as trustee of land (s 18(3)(b), (4)(b) (substituted by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 17(b))); (c) as trustee for a charity or as commissioner or trustee for ecclesiastical, collegiate or other public purposes (Ancient Monuments and Archaeological Areas Act 1979 s 18(3)(b), (4)(d)). As to the meaning of 'owner' see PARA 1006 note 6. As to the meaning of 'land' see PARA 1002 note 6. As to the meaning of 'trustee of land' see PARA 1028 note 2. As to bodies corporate see COMPANIES vol 14 (2009) PARA 2; CORPORATIONS vol 9(2) (2006 Reissue) PARA 1101 et seq. As to corporations sole see CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1111-1112.

2 As to the meaning of 'person' see PARA 803 note 16.

3 Ie under the Ancient Monuments and Archaeological Areas Act 1979 s 12(1), (1A) or (2); see PARA 1028.

4 Ancient Monuments and Archaeological Areas Act 1979 s 18(1) (amended by the National Heritage Act 1983 s 33(3), Sch 4 para 44). As to the meaning of 'guardianship deed' see PARA 1028 note 13.

Where a person, who is a limited owner of any land by virtue of holding an interest in the land in any of the capacities mentioned in the Ancient Monuments and Archaeological Areas Act 1979 s 18(4) (see heads (2)(a)-(c) in note 1), executes a guardianship deed in relation to the land, the guardianship deed binds every successive owner of any estate or interest in the land: s 18(6). However, where the land to which a guardianship deed relates is at the date of the deed subject to any incumbrance not capable of being overreached by the limited owner in exercise of any powers of sale or management conferred on him by law or under any settlement or other instrument, the deed does not bind the incumbrancer: s 18(7).

5 As to the Secretary of State see PARA 802.

6 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

7 As to the Historic Buildings and Monuments Commission for England see PARA 803.

8 As to the meaning of 'local authority' see PARA 1002 note 9.

9 Ie under the Ancient Monuments and Archaeological Areas Act 1979 s 16: see PARA 1032.

10 Ancient Monuments and Archaeological Areas Act 1979 s 18(2)(a) (amended by the National Heritage Act 1983 Sch 4 para 44).

11 Ie an agreement under the Ancient Monuments and Archaeological Areas Act 1979 s 17: see PARA 1033.

12 Ancient Monuments and Archaeological Areas Act 1979 s 18(2)(b). Where an agreement under s 17 to which a limited owner is a party expressly provides that the agreement as a whole or any restriction, prohibition or obligation arising thereunder is to be binding on his successors (but not otherwise), s 18(6), (7) (see note 4) applies to the agreement or, as the case may be, to the restriction, prohibition or obligation in question as it applies to a guardianship deed: s 18(8).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(B) Acquisition and Guardianship of Ancient Monuments/1035. Transfer of ancient monuments.

1035. Transfer of ancient monuments.

In respect of any monument¹ of which the Secretary of State², the Welsh Ministers³, the Historic Buildings and Monuments Commission for England⁴ or a local authority⁵ is the owner or guardian⁶, or any land associated with any such monument⁷, the Secretary of State, Welsh Ministers, Commission or local authority may enter into and carry into effect any agreement for the transfer of the monument or land or the guardianship of that monument or land⁸:

- 361 (1) from the Secretary of State or the Welsh Ministers to the local authority⁹;
- 362 (2) from the local authority to the Secretary of State or the Welsh Ministers¹⁰;
- 363 (3) from the local authority to another local authority¹¹;
- 364 (4) from the Secretary of State to the Commission¹²;
- 365 (5) from the Commission to the Secretary of State¹³;
- 366 (6) from the Commission to the local authority¹⁴; or
- 367 (7) from the local authority to the Commission¹⁵.

Where the Secretary of State, the Welsh Ministers, the Commission or the local authority in question is guardian of a monument or associated land, they may not enter into such an agreement with respect to that monument or land without the consent of the persons¹⁶ who are for the time being immediately affected by the operation of the guardianship deed¹⁷.

1 Any such monument will be an ancient monument: see the Ancient Monuments and Archaeological Areas Act 1979 ss 10-12; and PARAS 1026-1028. As to the meaning of 'ancient monument' see PARA 1025.

2 As to the Secretary of State see PARA 802.

3 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 The Commission may not enter into an agreement under the Ancient Monuments and Archaeological Areas Act 1979 21(1) in respect of a monument or land not situated in England: s 21(3) (added by the National Heritage Act 1983 s 33, Sch 4 para 47). As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2.

5 As to the meaning of 'local authority' see PARA 1002 note 9.

6 Ie by virtue of the Ancient Monuments and Archaeological Areas Act 1979. As to the meaning of 'owner' in this context see PARA 1031 note 9. As to guardianship see PARA 1028.

7 As to the meaning of 'land associated with any monument' see PARA 1031 note 9.

8 Ancient Monuments and Archaeological Areas Act 1979 s 21(1) (amended by the National Heritage Act 1983 s 33, Sch 4 para 47).

9 Ancient Monuments and Archaeological Areas Act 1979 s 21(1)(a). The Secretary of State may not enter into an agreement mentioned in s 21(1)(a) or (b) (see the text to note 10) in respect of a monument or land situated in England without consulting the Historic Buildings and Monuments Commission for England: s 21(4) (added by the National Heritage Act 1983 Sch 4 para 47). As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

10 Ancient Monuments and Archaeological Areas Act 1979 s 21(1)(b). See also note 9.

11 Ancient Monuments and Archaeological Areas Act 1979 s 21(1)(c).

12 Ancient Monuments and Archaeological Areas Act 1979 s 21(1)(d) (s 21(1)(d)-(g) added by the National Heritage Act 1983 Sch 4 para 47).

13 Ancient Monuments and Archaeological Areas Act 1979 s 21(1)(e) (as added: see note 12).

14 Ancient Monuments and Archaeological Areas Act 1979 s 21(1)(f) (as added: see note 12). The Commission may not enter into an agreement mentioned in s 21(1)(f) without consulting the Secretary of State: s 21(5) (added by the National Heritage Act 1983 Sch 4 para 47).

15 Ancient Monuments and Archaeological Areas Act 1979 s 21(1)(g) (as added: see note 12). The Commission may not enter into an agreement mentioned in s 21(1)(g) without the consent of the Secretary of State: s 21(6) (added by the National Heritage Act 1983 Sch 4 para 47).

16 As to the meaning of 'person' see PARA 803 note 16.

17 Ancient Monuments and Archaeological Areas Act 1979 s 21(2) (amended by the National Heritage Act 1983 Sch 4 para 47). For these purposes a person is to be taken to be immediately affected by the operation of a guardianship deed relating to any land if he is bound by the deed and is in possession or occupation of the land: see the Ancient Monuments and Archaeological Areas Act 1979 s 61(3).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(B) Acquisition and Guardianship of Ancient Monuments/1036. Disposal of land.

1036. Disposal of land.

The Secretary of State¹, the Welsh Ministers², the Historic Buildings and Monuments Commission for England³ or any local authority⁴ may dispose of any land acquired by them under the statutory provisions⁵ relating to the acquisition or transfer of ancient monuments⁶. Where the land in question is or includes a monument, the Secretary of State, the Welsh Ministers, the Commission or the local authority (as the case may be) may only dispose of it on such terms as will in their opinion ensure the preservation of the monument⁷; but this does not apply in any case where they are satisfied that it is no longer practicable to preserve the monument (whether because of the cost of preserving it or otherwise)⁸.

1 The Secretary of State must consult with the Historic Buildings and Monuments Commission for England before disposing of any land situated in England under these provisions: Ancient Monuments and Archaeological Areas Act 1979 s 30(1A) (added by the National Heritage Act 1983 s 33, Sch 4 para 52). 'Disposal' means disposal by way of sale, exchange or lease, or by way of the creation of any easement, right or privilege, or in any other manner, except by way of appropriation, gift or mortgage, and 'dispose of' must be construed accordingly: Town and Country Planning Act 1990 s 336(1) (definition applied by the Ancient Monuments and Archaeological Areas Act 1979 s 32(1)). As to the Secretary of State see PARA 802. As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'land' see PARA 1002 note 6. As to the meaning of 'England' see PARA 804 note 2. As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

2 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 The Commission must consult with the Secretary of State before disposing of any land under these provisions: Ancient Monuments and Archaeological Areas Act 1979 s 30(1B) (added by the National Heritage Act 1983 s 33, Sch 4 para 52).

4 A local authority must consult with the Secretary of State or, as appropriate, the Welsh Ministers before disposing of any land under these provisions: Ancient Monuments and Archaeological Areas Act 1979 s 30(2). As to the meaning of 'local authority' see PARA 1002 note 9.

5 Ie under the Ancient Monuments and Archaeological Areas Act 1979 s 10 (see PARA 1026), s 11 (see PARA 1027) or s 21 (see PARA 1035).

6 Ancient Monuments and Archaeological Areas Act 1979 s 30(1) (amended by the National Heritage Act 1983 s 33, Sch 4 para 52). As to the meaning of 'ancient monument' see PARA 1025.

7 Ancient Monuments and Archaeological Areas Act 1979 s 30(3) (amended by the National Heritage Act 1983 Sch 4 para 52).

8 Ancient Monuments and Archaeological Areas Act 1979 s 30(4) (amended by the National Heritage Act 1983 Sch 4 para 52).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(C) Public Access and Facilities/1037. Public access.

(C) PUBLIC ACCESS AND FACILITIES

1037. Public access.

Subject to the following provisions, the public have a right of access to any monument¹ under the ownership² or guardianship of the Secretary of State³, the Welsh Ministers⁴, the Historic Buildings and Monuments Commission for England⁵ or any local authority⁶ by virtue of the Ancient Monuments and Archaeological Areas Act 1979⁷. The Secretary of State, the Welsh Ministers, the Commission and any local authority⁸ may nevertheless control the times of normal public access to any such monument under their ownership or guardianship and may also, if they consider it necessary or expedient to do so in the interests of safety or for the maintenance⁹ or preservation of the monument, entirely exclude the public from access to any such monument or to any part of it, for such period as they think fit¹⁰. Notwithstanding the general right of public access¹¹, any person¹² authorised in that behalf by the Secretary of State, the Welsh Ministers, the Commission or a local authority may refuse admission:

- 368 (1) to any monument under the ownership or guardianship of the Secretary of State, Welsh Ministers, Commission or that local authority, as the case may be, by virtue of the Ancient Monuments and Archaeological Areas Act 1979¹³; or
- 369 (2) in the case of the Secretary of State or the Welsh Ministers, to any monument¹⁴ otherwise under his or their control or management¹⁵,

to any person he has reasonable cause to believe is likely to do anything which would tend to injure or disfigure the monument or its amenities or to disturb the public in their enjoyment of it¹⁶.

The Secretary of State, the Welsh Ministers and any local authority may, by regulations¹⁷, regulate public access to any monument, or to all or any of the monuments under their ownership or guardianship by virtue of the Ancient Monuments and Archaeological Areas Act 1979 and any such regulations made by the Secretary of State or the Welsh Ministers may also apply to any monument, or to all or any of the monuments, under his or their control or management for any other reason¹⁸. The Secretary of State may also by regulations make such provision as appears to him necessary for prohibiting or regulating any act or thing which would tend to injure or disfigure any monument under the ownership or guardianship of the Commission, or the monument's amenities, or to disturb the public in their enjoyment of it¹⁹. If any person contravenes or fails to comply with any provision of any regulations made under the above provisions he commits an offence²⁰.

1 Any such monument under ownership or guardianship will be an ancient monument: see the Ancient Monuments and Archaeological Areas Act 1979 ss 10-12, 21; and PARAS 1026-1028, 1035. As to the meaning of 'ancient monument' see PARA 1025.

2 As to the meaning of 'ownership' in this context see PARA 1031 note 9.

3 As to the Secretary of State see PARA 802.

4 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable

by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

5 As to the Historic Buildings and Monuments Commission for England see PARA 803.

6 As to the meaning of 'local authority' see PARA 1002 note 9.

7 Ancient Monuments and Archaeological Areas Act 1979 s 19(1) (amended by the National Heritage Act 1983 Sch 4 para 45). In relation to any monument under guardianship, the Ancient Monuments and Archaeological Areas Act 1979 s 19(1) is subject to any provision to the contrary in the guardianship deed: s 19(9). As to the meaning of 'guardianship deed' see PARA 1028 note 13. As to guardianship see PARA 1028. As to the provision of facilities for the public see PARA 1038.

8 This power of a local authority to control the times of normal public access to any monument is only exercisable by regulations made under the Ancient Monuments and Archaeological Areas Act 1979 s 19 (s 19(2) (a)); and the power under this provision of a local authority entirely to exclude the public from access to any monument with a view to its preservation is only exercisable with the consent of the Secretary of State or, as appropriate, the Welsh Ministers (s 19(2)(b)). Regulations made by a local authority under s 19 do not take effect unless they are submitted to and confirmed by the Secretary of State or, as the case may be, the Welsh Ministers, and the Secretary of State or the Welsh Ministers may confirm any such regulations either with or without modifications: s 19(8). Such regulations, not being made by statutory instrument, are not recorded in this work.

9 As to the meaning of 'maintenance' see PARA 1025 note 11.

10 Ancient Monuments and Archaeological Areas Act 1979 s 19(2) (amended by the National Heritage Act 1983 Sch 4 para 45).

11 *I*e notwithstanding the Ancient Monuments and Archaeological Areas Act 1979 s 19(1); see the text to notes 1-7.

12 As to the meaning of 'person' see PARA 803 note 16.

13 Ancient Monuments and Archaeological Areas Act 1979 s 19(6)(a) (amended by the National Heritage Act 1983 Sch 4 para 45).

14 This provision extends to monuments other than ancient monuments. As to the meaning of 'monument' see PARA 1009.

15 Ancient Monuments and Archaeological Areas Act 1979 s 19(6)(b).

16 Ancient Monuments and Archaeological Areas Act 1979 s 19(6) (amended by the National Heritage Act 1983 Sch 4 para 45).

17 The Secretary of State must consult with the Historic Buildings and Monuments Commission for England before he makes any such regulations in relation only to monuments situated in England: Ancient Monuments and Archaeological Areas Act 1979 s 19(3) (amended by the National Heritage Act 1983 s 33, Sch 4 para 45). As to the making of regulations see PARA 1005. See also note 8. At the date at which this volume states the law no such regulations had been made.

18 Ancient Monuments and Archaeological Areas Act 1979 s 19(3) (amended by the National Heritage Act 1983 Sch 4 para 45). Without prejudice to the generality of the Ancient Monuments and Archaeological Areas Act 1979 s 19(3), regulations made by the Secretary of State, the Welsh Ministers or a local authority thereunder may prescribe the times when the public are to have access to monuments to which the regulations apply and may make such provision as appears to them to be necessary for (1) the preservation of any such monument and its amenities or of any property of the Secretary of State, Welsh Ministers or local authority (s 19(4)(a)); and (2) prohibiting or regulating any act or thing which would tend to injure or disfigure any such monument or its amenities or to disturb the public in their enjoyment of it (s 19(4)(b)), and may prescribe charges for the admission of the public to any such monument or to any class or description of monuments to which the regulations apply (s 19(4) (amended by the National Heritage Act 1983 Sch 4 para 45)). Without prejudice to the Ancient Monuments and Archaeological Areas Act 1979 s 19(3), (4), the Secretary of State, the Welsh Ministers, the Commission and any local authority have power to make such charges as they may from time to time determine for the admission of the public to any monument under their ownership or guardianship by virtue of the Ancient Monuments and Archaeological Areas Act 1979 or, in the case of the Secretary of State or the Welsh Ministers, to any monument otherwise under his or their control or management: s 19(5) (amended by the National Heritage Act 1983 Sch 4 para 45).

19 Ancient Monuments and Archaeological Areas Act 1979 s 19(4A) (s 19(4A), (4B) added by the National Heritage Act 1983 Sch 4 para 45). The Secretary of State must consult with the Commission before making any such regulations: Ancient Monuments and Archaeological Areas Act 1979 s 19(4B) (as so added). At the date at which this volume states the law no such regulations had been made.

20 See the Ancient Monuments and Archaeological Areas Act 1979 s 19(7). The penalty for such an offence is, on summary conviction, a fine not exceeding level 3 on the standard scale: s 19(7) (amended by the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to offences by bodies corporate see PARA 1008. A person who has an enforcement function in relation to an offence under the Ancient Monuments and Archaeological Areas Act 1979 is a regulator for the purposes of the Regulatory Enforcement and Sanctions Act 2008: see **ADMINISTRATIVE LAW**.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(C) Public Access and Facilities/1038. Provision of facilities for the public.

1038. Provision of facilities for the public.

The Secretary of State¹, the Welsh Ministers², the Historic Buildings and Monuments Commission for England³ and any local authority⁴ may provide such facilities and information or other services for the public as appear to them to be necessary or desirable for or in connection with affording public access⁵ to: (1) any monument under their ownership or guardianship by virtue of the Ancient Monuments and Archaeological Areas Act 1979⁶; or (2) in the case of the Secretary of State or the Welsh Ministers, any monument⁷ otherwise under his or their control or management⁸. The Secretary of State, the Welsh Ministers, the Commission and any local authority may make such charges as they from time to time determine for the use of any facility or service so provided⁹.

The Commission, as respects a monument situated in England¹⁰, or the Welsh Ministers, as respects a monument situated in Wales, may contribute towards the cost of the provision of facilities or services for the public by a local authority under the above provisions¹¹.

1 As to the Secretary of State see PARA 802.

2 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 As to the Historic Buildings and Monuments Commission for England see PARA 803.

4 As to the meaning of 'local authority' see PARA 1002 note 9.

5 Ancient Monuments and Archaeological Areas Act 1979 s 20(1) (amended by the National Heritage Act 1983 Sch 4 para 46). Facilities and information or other public services may be provided under the Ancient Monuments and Archaeological Areas Act 1979 s 20 in or on the monument itself or on any land associated with it: s 20(2). As to public access see PARA 1037. As to the meaning of 'land associated with a monument' see PARA 1031 note 9.

6 Ancient Monuments and Archaeological Areas Act 1979 s 20(1)(a). A monument in this case will be an ancient monument. As to the meaning of 'ancient monument' see PARA 1025. As to the meaning of 'owner' in this context see PARA 1031 note 9. As to guardianship see PARA 1028.

7 Such a monument will not necessarily be an ancient monument. As to the meaning of 'monument' see PARA 1009.

8 Ancient Monuments and Archaeological Areas Act 1979 s 20(1)(b).

9 Ancient Monuments and Archaeological Areas Act 1979 s 20(3) (amended by the National Heritage Act 1983 Sch 4 para 46).

10 This reference to a monument situated in England includes any monument situated in, on or under the seabed within the seaward limits of the United Kingdom territorial waters adjacent to England; and an order under the National Heritage Act 1983 s 33(10) (orders determining limits of waters adjacent to England: see PARA 804 note 2) applies for these purposes as it applies for the purposes of s 33(9): Ancient Monuments and Archaeological Areas Act 1979 s 24(3AA) (added by the National Heritage Act 2002 s 2(3)). As to the meanings of 'England' and 'United Kingdom' see PARA 804 note 2. As to United Kingdom territorial waters see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

11 See the Ancient Monuments and Archaeological Areas Act 1979 s 24(3), (3A) (s 24(3) amended, s 24(3A) added, by the National Heritage Act 1983 Sch 4 para 48). As to expenditure in respect of ancient monuments generally see PARA 1039.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(D) Miscellaneous Provisions relating to Ancient Monuments/1039. Expenditure on acquisition or preservation.

(D) MISCELLANEOUS PROVISIONS RELATING TO ANCIENT MONUMENTS

1039. Expenditure on acquisition or preservation.

The Historic Buildings and Monuments Commission for England¹, as respects an ancient monument² situated in England³, and the Welsh Ministers⁴, as respects an ancient monument situated in Wales:

- 370 (1) may defray or contribute towards the cost of the acquisition by any person⁵ of any ancient monument⁶;
- 371 (2) may undertake, or assist in, or defray or contribute towards the cost of the removal of any ancient monument or of any part of any such monument to another place for the purpose of preserving it, and may at the request of the owner⁷ undertake, or assist in, or defray or contribute towards the cost of the preservation, maintenance⁸ and management of any ancient monument⁹.

At the request of the owner, any local authority¹⁰ may undertake, or assist in, or defray or contribute towards the cost of the preservation, maintenance and management of any ancient monument situated in or in the vicinity of its area¹¹.

No expenses may be incurred by the Commission, the Welsh Ministers or any local authority under these provisions in connection with any monument which is occupied as a dwelling house by any person other than a person employed as its caretaker or his family¹².

The Secretary of State, the Welsh Ministers or any local authority may receive voluntary contributions for or towards the cost of any expenditure incurred by them under the Ancient Monuments and Archaeological Areas Act 1979¹³, whether in relation to any particular monument¹⁴ or land¹⁵ or otherwise¹⁶.

1 As to the Historic Buildings and Monuments Commission for England see PARA 803.

2 As to the meaning of 'ancient monument' see PARA 1025.

3 See the Ancient Monuments and Archaeological Areas Act 1979 s 24(3A), (3B) (both added by the National Heritage Act 1983 Sch 4 para 48). This reference to a monument situated in England includes any monument situated in, on or under the seabed within the seaward limits of the United Kingdom territorial waters adjacent to England; and an order under the National Heritage Act 1983 s 33(10) (orders determining limits of waters adjacent to England: see PARA 804 note 2) applies for these purposes as it applies for the purposes of s 33(9): Ancient Monuments and Archaeological Areas Act 1979 s 24(3AA) (added by the National Heritage Act 2002 s 2(3)). As to the meanings of 'England' and 'United Kingdom' see PARA 804 note 2. As to United Kingdom territorial waters see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

4 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

5 As to the meaning of 'person' see PARA 803 note 16.

- 6 Ancient Monuments and Archaeological Areas Act 1979 s 24(1) (amended by the National Heritage Act 1983 Sch 4 para 48).
- 7 As to the meaning of 'owner' see PARA 1006 note 6.
- 8 As to the meaning of 'maintenance' see PARA 1025 note 11.
- 9 Ancient Monuments and Archaeological Areas Act 1979 s 24(2) (amended by the National Heritage Act 1983 Sch 4 para 48).
- 10 As to the meaning of 'local authority' see PARA 1002 note 9.
- 11 Ancient Monuments and Archaeological Areas Act 1979 s 24(4).
- 12 Ancient Monuments and Archaeological Areas Act 1979 s 24(5) (amended by the National Heritage Act 1983 Sch 4 para 48).
- 13 Ie under the Ancient Monuments and Archaeological Areas Act 1979 Pt I (ss 1-32).
- 14 As to the meaning of 'monument' see PARA 1009.
- 15 As to the meaning of 'land' see PARA 1002 note 6.
- 16 Ancient Monuments and Archaeological Areas Act 1979 s 31.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(D) Miscellaneous Provisions relating to Ancient Monuments/1040. Advice and superintendence.

1040. Advice and superintendence.

The Historic Buildings and Monuments Commission for England¹, as respects an ancient monument² situated in England³, or the Welsh Ministers⁴, as respects an ancient monument situated in Wales, may give advice with reference to the treatment of any such monument⁵. The Commission and the Welsh Ministers may also, if in their opinion it is advisable, superintend any work in connection with any ancient monument if invited to do so by the owner⁶, and must superintend any such work, whether required to do so by the owner or not, in connection with any scheduled monument⁷, if in their opinion it is advisable⁸.

- 1 As to the Historic Buildings and Monuments Commission for England see PARA 803.
- 2 As to the meaning of 'ancient monument' see PARA 1025.
- 3 See the Ancient Monuments and Archaeological Areas Act 1979 s 25(3A), (3B) (both added by the National Heritage Act 1983 Sch 4 para 49). As to the meaning of 'England' see PARA 804 note 2.
- 4 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.
- 5 See the Ancient Monuments and Archaeological Areas Act 1979 s 25(1) (amended by the National Heritage Act 1983 s 33, Sch 4 para 49).
- 6 As to the meaning of 'owner' see PARA 1006 note 6.
- 7 As to the meaning of 'scheduled monument' see PARA 1010.
- 8 Ancient Monuments and Archaeological Areas Act 1979 s 25(2) (s 25(2), (3) amended by the National Heritage Act 1983 Sch 4 para 49). The Commission or the Welsh Ministers may make a charge for giving advice and superintendence under this provision or may give it free of charge, as they think fit: Ancient Monuments and Archaeological Areas Act 1979 s 25(3) (as so amended).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(D) Miscellaneous Provisions relating to Ancient Monuments/1041. Entry on land believed to contain an ancient monument.

1041. Entry on land believed to contain an ancient monument.

A person¹ duly authorised in writing² by the Secretary of State or, in relation to Wales, the Welsh Ministers³ may at any reasonable time enter any land⁴ in, on or under which the Secretary of State or the Welsh Ministers know or have reason to believe there is an ancient monument⁵ for the purpose of inspecting the land, including any building⁶ or other structure on the land, with a view to recording any matters of archaeological or historical interest⁷. A person entering any land in exercise of this power may carry out excavations⁸ in the land for the purpose of archaeological investigation⁹.

1 As to the meaning of 'person' see PARA 803 note 16.

2 As to the meaning of 'writing' see PARA 805 note 14.

3 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 As to the meaning of 'land' see PARA 1002 note 6. As to powers of entry see further PARAS 1058-1059.

5 As to the meaning of 'ancient monument' see PARA 1025.

6 As to the meaning of 'building' see PARA 1024 note 16.

7 Ancient Monuments and Archaeological Areas Act 1979 s 26(1). As to the treatment and preservation of finds see PARA 1060.

8 No excavations may be made in exercise of this power except with the consent of every person whose consent to the making of the excavation would otherwise be required: Ancient Monuments and Archaeological Areas Act 1979 s 26(3).

9 Ancient Monuments and Archaeological Areas Act 1979 s 26(2). As to the meaning of 'archaeological investigation' see PARA 1013 note 12.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/B. ANCIENT MONUMENTS/(D) Miscellaneous Provisions relating to Ancient Monuments/1042. Offence of damaging monuments.

1042. Offence of damaging monuments.

A person¹ who without lawful excuse destroys or damages any protected monument² knowing that it is a protected monument³ and intending to destroy or damage the monument, or being reckless as to whether the monument would be destroyed or damaged⁴, is guilty of an offence⁵. This applies to anything done by or under the authority of the owner⁶ of the monument, other than an act for the execution of excepted works⁷, as it applies to anything done by any other person⁸.

Where the owner or any other person is convicted of an offence involving damage to a monument situated in England⁹ and Wales which was at the time of the offence under the guardianship of the Secretary of State, the Welsh Ministers, the Historic Buildings and Monuments Commission for England or any local authority under the Ancient Monuments and Archaeological Areas Act 1979, any compensation order¹⁰ made in respect of that damage must be made in favour of the Secretary of State, the Welsh Ministers, the Commission or the local authority in question, as the case may require¹¹.

1 As to the meaning of 'person' see PARA 803 note 16. As to offences by bodies corporate see PARA 1008.

2 'Protected monument' means any scheduled monument and any monument under the ownership or guardianship of the Secretary of State, the Welsh Ministers, the Historic Buildings and Monuments Commission for England or a local authority by virtue of the Ancient Monuments and Archaeological Areas Act 1979: s 28(3) (amended by the National Heritage Act 1983 s 33(3), Sch 4 para 50). As to the meaning of 'scheduled monument' see PARA 1010. A monument under the ownership or guardianship of the Secretary of State, the Welsh Ministers, the Commission or a local authority will be an ancient monument. As to the meaning of 'ancient monument' see PARA 1025. As to the meaning of 'owner' in this context see PARA 1031 note 9. As to guardianship see PARA 1028. As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'local authority' see PARA 1002 note 9.

The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 Ancient Monuments and Archaeological Areas Act 1979 s 28(1)(a).

4 Ancient Monuments and Archaeological Areas Act 1979 s 28(1)(b).

5 Ancient Monuments and Archaeological Areas Act 1979 s 28(1). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum, or to imprisonment for a term not exceeding six months or both (s 28(4)(a)), or, on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both (s 28(4)(b)). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. A person who has an enforcement function in relation to an offence under the Ancient Monuments and Archaeological Areas Act 1979 is a regulator for the purposes of the Regulatory Enforcement and Sanctions Act 2008: see **ADMINISTRATIVE LAW**.

6 As to the meaning of 'owner' see PARA 1006 note 6.

7 'Excepted works' means works for which scheduled monument consent has been given under the Ancient Monuments and Archaeological Areas Act 1979, including any consent granted by order under s 3 (see PARA 1013): s 28(2). As to the meaning of 'works' see PARA 1012 note 2. As to the control of works see PARA 1012. As to the meaning of 'scheduled monument consent' see PARA 1013.

8 Ancient Monuments and Archaeological Areas Act 1979 s 28(2).

9 As to the meaning of 'England' see PARA 804 note 2.

10 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (compensation orders against convicted persons): see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 375.

11 Ancient Monuments and Archaeological Areas Act 1979 s 29 (amended by the National Heritage Act 1983 Sch 4 para 51; Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 59).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(A) Designation Orders/1043. Designation by the Secretary of State or the Welsh Ministers of archaeological areas.

C. ARCHAEOLOGICAL AREAS

(A) DESIGNATION ORDERS

1043. Designation by the Secretary of State or the Welsh Ministers of archaeological areas.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹ may from time to time by order² designate as an area of archaeological importance³ any area which appears to him or them to merit treatment as such for the purposes of the Ancient Monuments and Archaeological Areas Act 1979⁴. Before making such a designation order the Secretary of State or the Welsh Ministers must: (1) consult⁵ each of the local authorities concerned⁶ (and the Secretary of State must also consult with the Historic Buildings and Monuments Commission for England)⁷; and (2) publish notice of the proposal to make the order⁸.

The order must be in such form as the Secretary of State or the Welsh Ministers consider appropriate⁹ and must describe by reference to a map the area affected¹⁰. The Secretary of State or the Welsh Ministers may make the order, either without modifications or with such modification only as consists in reducing the area affected, at any time after the end of a period of six weeks beginning with the date on which notice of the proposal to make the order is first published¹¹. On making the order the Secretary of State or the Welsh Ministers must publish notice of the making of the order¹² and deposit a copy of the order and map with each local authority concerned¹³. The order does not come into operation until the end of the period of six months¹⁴ beginning with the date on which it is made¹⁵.

1 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 An order under the Ancient Monuments and Archaeological Areas Act 1979 s 33 designating an area as an area of archaeological importance, whether by the Secretary of State, the Welsh Ministers, a local authority or the Historic Buildings and Monuments Commission for England, is known as a 'designation order': see ss 33(3), 61(1) (s 33(3) amended by the Local Government Act 1985 s 6, Sch 2 para 2(2)). As to the meaning of 'local authority' see PARA 1002 note 9. As to orders by a local authority see PARA 1044. As to the Historic Buildings and Monuments Commission for England see PARA 803. As to orders by the Commission see PARA 1045. A designation order relating to an area in England and Wales is a local land charge: Ancient Monuments and Archaeological Areas Act 1979 s 33(5). As to the meaning of 'England' see PARA 804 note 2. As to local land charges see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq.

3 'Area of archaeological importance' means an area designated as such under the Ancient Monuments and Archaeological Areas Act 1979 s 33 (see this paragraph and PARAS 1044, 1045): s 61(1).

4 Ancient Monuments and Archaeological Areas Act 1979 s 33(1). As to challenges to the validity of a designation order see PARA 1047.

5 The consultations required by the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 2(a), (aa) (see the text to notes 6, 7) must precede the publication of the notice required by Sch 2 para 2(b) (see the text to note 8): Sch 2 para 3(1) (amended by the National Heritage Act 1983 Sch 4 para 69). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

6 Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 2(a). A local authority is a local authority concerned in relation to a designation order or an order varying or revoking such an order if the area affected by the designation order, or any part of that area, is within the area of the local authority: Sch 2 para 20(2). As to the variation and revocation of orders see PARA 1046.

7 See the Ancient Monuments and Archaeological Areas Act 1979 s 33(1), Sch 2 para 2(aa) (s 33(1) amended by the National Heritage Act 1983 Sch 4 para 54; Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 2(aa) added by amended by the National Heritage Act 1983 Sch 4 para 69).

8 Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 2(b). The notice must be published in two successive weeks in the London Gazette and in one or more local newspapers circulating in the locality in which the area affected is situated: Sch 2 para 3(2)(a). The notice must state that the Secretary of State or, as the case may be, the Welsh Ministers propose to make the order, describe the area affected and the effect of the order (Sch 2 para 3(2)(b)), and indicate where a copy of the draft order and the map to which it refers may be inspected (Sch 2 para 3(2)(c)). 'Area affected' in relation to a designation order means the area to which the order for the time being relates: Sch 2 para 20(1).

Copies of the draft order and of the map to which it refers must be deposited with each of the local authorities concerned on or before the date on which notice of the proposal to make the order is first published (Sch 2 para 4(a)); and must be sent to the Commission (if the area which would be designated by the order is situated in England) (Sch 2 para 4(aa) (added by the National Heritage Act 1983 s 33, Sch 4 para 69)); and must be kept available for public inspection by each of those authorities, free of charge, at reasonable hours and at a convenient place, until the Secretary of State or the Welsh Ministers make the order or notify the local authority in question that he or they have determined not to make it (Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 4(b)). Copies of the draft order and of the map to which it refers must similarly be kept available by the Secretary of State or the Welsh Ministers, until he or they make the order or determine not to make it: Sch 2 para 5.

9 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 1(2).

10 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 1(1). The map must be to such a scale as the Secretary of State or the Welsh Ministers consider appropriate: see Sch 2 para 1(2).

11 Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 6.

12 A notice must be published in two successive weeks in the London Gazette and in one or more local newspapers circulating in the locality in which the area affected is situated, stating that the order has been made and describing the area affected and the effect of the order: see the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 7(a).

13 Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 7(b). In a case where the area designated is situated in England, the Secretary of State must also send to the Historic Buildings and Monuments Commission for England a copy of the order and of the map to which it refers: Sch 2 para 7(c) (added by the National Heritage Act 1983 Sch 4 para 69).

14 As to the meaning of 'month' see PARA 803 note 11.

15 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 16(1).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(A) Designation Orders/1044. Designation by local authority of archaeological areas.

1044. Designation by local authority of archaeological areas.

A local authority¹ may from time to time by a designation order² designate as an area of archaeological importance³ any area within the area of that local authority which appears to it to merit treatment as such for the purposes of the Ancient Monuments and Archaeological Areas Act 1979⁴. Before making a designation order the authority must consult⁵ any other local authority concerned⁶, and publish notice of its proposal to make the order⁷.

A designation order made by a local authority must be in such form as may be prescribed⁸ and must describe by reference to a map the area affected⁹. The authority may make the order, either without modifications or with such modification only as consists in reducing the area affected, and submit it to the Secretary of State or, in relation to Wales, the Welsh Ministers for confirmation¹⁰, at any time after the end of the period of six weeks beginning with the date on which notice of its proposal to make the order was first published¹¹. A designation order made by a local authority does not take effect unless it is confirmed by the Secretary of State or, as appropriate, the Welsh Ministers, and the Secretary of State or Welsh Ministers may confirm any such order either without modifications or with such modification only as consists in reducing the area affected¹². A designation order made by a local authority and confirmed by the Secretary of State or, as the case may be, the Welsh Ministers does not come into operation until the end of the period of six months¹³ beginning with the date on which it is confirmed¹⁴.

1 As to the meaning of 'local authority' see PARA 1002 note 9.

2 As to the meaning of 'designation order' see PARA 1043 note 2.

3 As to the meaning of 'area of archaeological importance' see PARA 1043 note 3.

4 Ancient Monuments and Archaeological Areas Act 1979 s 33(2). Where the area in question is situated in England the local authority must first notify the Historic Buildings and Monuments Commission for England of its intention to make the order: see s 33(2), Sch 2 para 9A (s 33(2) amended by the National Heritage Act 1983 Sch 4 para 54; Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 9A added by the National Heritage Act 1983 s 33, Sch 4 para 69). As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2. As to challenges to the validity of a designation order see PARA 1047.

5 The consultation must precede the publication of the notice required by the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 9(b) (see the text to note 7): Sch 2 para 10(1).

6 Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 9(a). As to the meaning of 'local authority concerned' see PARA 1043 note 6.

7 Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 9(b). The notice must be in the prescribed form and must otherwise comply with Sch 2 para 3(2) (see PARA 1043 note 8) (with the necessary modifications): Sch 2 para 10(2). Copies of the draft order and of the map to which it refers (1) must be deposited with each of the local authorities concerned (other than the local authority proposing to make the order) on or before the date on which notice of the proposal to make the order is first published in accordance with Sch 2 para 3(2)(a) as applied by Sch 2 para 10 (Sch 2 para 11(a)); and (2) must be kept available for public inspection by each of the local authorities concerned, free of charge at reasonable hours and at a convenient place, until the local authority proposing to make the order either make it or determine not to make it and, in the case of any other local authority concerned, notifies that local authority of its determination (Sch 2 para 11(b)). 'Prescribed' means prescribed by regulations made by the Secretary of State or the Welsh Ministers: see

s 61(1). As to the making of regulations see PARA 1005. At the date at which this volume states the law no such regulations had been made.

The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

8 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 8(2). At the date at which this volume states the law no regulations had been made for this purpose.

9 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 8(1). The map must be to such a scale as may be prescribed: see Sch 2 para 8(2). At the date at which this volume states the law no regulations had been made for this purpose. As to the meaning of 'area affected' see PARA 1043 note 8.

10 The Secretary of State or the Welsh Ministers may by regulations prescribe the procedure for submitting orders for confirmation: Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 15. At the date at which this volume states the law no such regulations had been made.

11 Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 12.

12 Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 13. If the Secretary of State or the Welsh Ministers confirm the order the local authority must on being notified that the order has been confirmed: (1) publish notice of the making of the order in the manner and form prescribed (Sch 2 para 14(a)); and (2) deposit a copy of the order and of the map to which it refers with any other local authority concerned (Sch 2 para 14(b)); and (3) send to the Historic Buildings and Monuments Commission for England a copy of the order and of the map to which it refers, if the area designated by the order is situated in England (Sch 2 para 14(c) (added by the National Heritage Act 1983 s 33, Sch 4 para 69)). At the date at which this volume states the law no regulations had been made for the purposes of head (1) above.

13 As to the meaning of 'month' see PARA 803 note 11.

14 Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 16(2).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(A) Designation Orders/1045. Designation by the Historic Buildings and Monuments Commission for England of archaeological areas.

1045. Designation by the Historic Buildings and Monuments Commission for England of archaeological areas.

The Historic Buildings and Monuments Commission for England¹ may from time to time by a designation order² designate as an area of archaeological importance³ any area in Greater London⁴ which appears to it to merit treatment as such for the purposes of the Ancient Monuments and Archaeological Areas Act 1979⁵. Before making a designation order the Commission must consult⁶ any local authority concerned⁷, and publish notice of its proposal to make the order⁸.

A designation order made by the Commission must be in such form as may be prescribed⁹ and describe by reference to a map the area affected¹⁰. The Commission may make the order, either without modifications or with such modification only as consists in reducing the area affected, and submit it to the Secretary of State for confirmation¹¹, at any time after the end of the period of six weeks beginning with the date on which notice of its proposal to make the order is first published¹². A designation order made by the Commission does not take effect unless it is confirmed by the Secretary of State, and the Secretary of State may confirm any such order either without modifications or with such modification only as consists in reducing the area affected¹³.

1 As to the Historic Buildings and Monuments Commission for England see PARA 803.

2 As to the meaning of 'designation order' see PARA 1043 note 2.

3 As to the meaning of 'area of archaeological importance' see PARA 1043 note 3.

4 As to the meaning of 'Greater London' see PARA 859 note 4.

5 Ancient Monuments and Archaeological Areas Act 1979 s 33(2A) (added by the Local Government Act 1985 s 6, Sch 2 para 2(2)). As to challenges to the validity of a designation order see PARA 1047.

6 The consultation must precede the publication of the notice under the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 paras 9(b), 15A(b) (see the text to note 8): Sch 2 paras 10(1), 15A (added by the Local Government Act 1985 Sch 2 para 2(4)).

7 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 paras 9(a), 15A(b) (as added: see note 6). As to the meaning of 'local authority concerned' see PARA 1043 note 6.

8 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 paras 9(b), 15A(b) (as added: see note 6). The notice must be in the prescribed form and must otherwise comply with Sch 2 para 3(2) (see PARA 1043 note 8), with the necessary modifications: see Sch 2 paras 10(2), 15A (as so added). Copies of the draft order and of the map to which it refers (1) must be deposited with each of the local authorities concerned on or before the date on which notice of the proposal to make the order is first published in accordance with Sch 2 para 3(2)(a) as applied by Sch 2 para 10 (see Sch 2 paras 11(a), 15A(c) (as so added)); and (2) must be kept available for public inspection by each of the local authorities concerned, free of charge at reasonable hours and at a convenient place, until the Commission either makes it or determines not to make it and, in the case of any local authority concerned, notifies that local authority of its determination (see Sch 2 paras 11(b), 15A(c) (as so added)). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 61(1). As to the making of regulations see PARA 1005. As to the Secretary of State see PARA 802. At the date at which this volume states the law no such regulations had been made.

9 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 paras 8(1), 15A(a) (as added: see note 6). At the date at which this volume states the law no regulations had been made for this purpose.

10 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 paras 8(2), 15A (as added: see note 6). The map must be to such scale as may be prescribed: see Sch 2 paras 8(2), 15A (as so added). At the date at which this volume states the law no regulations had been made for this purpose. As to the meaning of 'area affected' see PARA 1043 note 8.

11 The Secretary of State may by regulations prescribe the procedure to be followed by the Commission in submitting orders for confirmation: see the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 paras 15, 15A(a) (as added: see note 6). At the date at which this volume states the law no such regulations had been made.

12 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 paras 12, 15A(a) (as added: see note 6).

13 See the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 paras 13, 15A(a) (as added: see note 6). If the Secretary of State confirms the order the Commission must on being notified that the order has been confirmed: (1) publish notice of the making of the order in the manner and form prescribed (see Sch 2 paras 14(a), 15A(b) (as so added)); and (2) deposit a copy of the order and of the map to which it refers with any local authority concerned (Sch 2 paras 14(b), 15A(b) (as so added)). At the date at which this volume states the law no regulations had been made for the purposes of head (1) above.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(A) Designation Orders/1046. Variation or revocation of designation order.

1046. Variation or revocation of designation order.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹ may at any time by order² vary or revoke a designation order³, but the power to vary such an order is confined to reducing the area designated by the order⁴. Before and on making an order varying or revoking a designation order the Secretary of State or the Welsh Ministers must follow the procedure laid down for the making by them of a designation order⁵.

An order varying or revoking a designation order must describe by reference to a map the area affected by the designation order and (in the case of an order varying a designation order) the reduction of that area made by the order⁶. The map must be to such a scale, and the order in such form, as the Secretary of State or the Welsh Ministers consider appropriate⁷.

1 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 As to the making of orders see PARA 1005.

3 As to the meaning of 'designation order' see PARA 1043 note 2.

4 Ancient Monuments and Archaeological Areas Act 1979 s 33(4). The Secretary of State must consult with the Historic Buildings and Monuments Commission for England before varying or revoking an order relating to an area situated in England: s 33(4) (amended by the National Heritage Act 1983 Sch 4 para 54). As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627. As to challenges to the validity of an order varying or revoking a designation order see PARA 1047.

5 Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 18. Accordingly Sch 2 paras 2-7 (see PARA 1043) apply, taking references to the area as references to the area affected by the designation order: see Sch 2 para 18.

6 Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 17(1).

7 Ancient Monuments and Archaeological Areas Act 1979 Sch 2 para 17(2).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(A) Designation Orders/1047. Questioning the validity of a designation order or an order varying or revoking it.

1047. Questioning the validity of a designation order or an order varying or revoking it.

If any person is aggrieved¹ by a designation order² or an order³ varying or revoking a designation order⁴ and desires to question its validity on the grounds that it is not within the powers of the Ancient Monuments and Archaeological Areas Act 1979 or that any of the relevant requirements⁵ have not been complied with in relation to it, then, within six weeks from the relevant date⁶, he may make an application to the High Court⁷. On such application the court may by interim order suspend the operation of the order until the final determination of the proceedings⁸, and, if satisfied that the order is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any of the relevant requirements, may quash the order in whole or in part⁹.

Except as provided above, the validity of any designation order or order varying or revoking a designation order may not be questioned in any legal proceedings whatsoever¹⁰.

1 As to the meaning of 'person aggrieved' see **JUDICIAL REVIEW** vol 61 (2010) PARA 656. As to the meaning of 'person' see PARA 803 note 16.

2 As to the meaning of 'designation order' see PARA 1043 note 2.

3 Ie an order under the Ancient Monuments and Archaeological Areas Act 1979 s 33(4): see PARA 1046.

4 See the Ancient Monuments and Archaeological Areas Act 1979 s 55(1)(a), (2).

5 'Relevant requirements' means any requirements of the Ancient Monuments and Archaeological Areas Act 1979 or of any regulations made under it which are applicable to the order: s 55(6)(a).

6 'Relevant date' means the date on which notice of the making of the order is published or first published in accordance with the Ancient Monuments and Archaeological Areas Act 1979 Sch 2 (see Sch 2 paras 7, 14, 18; and PARAS 1043-1046): s 55(4)(a).

7 See the Ancient Monuments and Archaeological Areas Act 1979 s 55(1). As to the High Court of Justice in England and Wales see **COURTS** vol 10 (Reissue) PARA 602 et seq.

8 See the Ancient Monuments and Archaeological Areas Act 1979 s 55(5)(a).

9 Ancient Monuments and Archaeological Areas Act 1979 s 55(5)(b).

10 See the Ancient Monuments and Archaeological Areas Act 1979 s 55(7). As to judicial review of decisions expressed in this way to be immune from challenge see **JUDICIAL REVIEW** vol 61 (2010) PARA 655.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(B) Operations in Areas of Archaeological Importance/1048. Investigating authorities for areas of archaeological importance.

(B) OPERATIONS IN AREAS OF ARCHAEOLOGICAL IMPORTANCE

1048. Investigating authorities for areas of archaeological importance.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹ may at any time appoint any person², whom he or they consider to be competent to undertake archaeological investigations³, to exercise in relation to any area of archaeological importance⁴ the functions conferred⁵ on the investigating authority⁶ for such an area⁷. A person's appointment as investigating authority may be cancelled at any time by the Secretary of State or, as appropriate, the Welsh Ministers⁸. On appointing or cancelling the appointment of any person as investigating authority for an area of archaeological importance, the Secretary of State or the Welsh Ministers must notify each local authority⁹ in whose area the area of archaeological importance in question is wholly or partly situated¹⁰.

Where there is for the time being no investigating authority for an area of archaeological importance, the functions of the investigating authority for that area are exercisable in the case of an area situated in England by the Historic Buildings and Monuments Commission for England or in the case of an area situated in Wales by the Welsh Ministers¹¹.

A person duly authorised in writing¹² by any person by whom the functions of an investigating authority are for the time being exercisable may act on his behalf in the exercise of those functions¹³.

1 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 The appointment is on such terms and for such period as the Secretary of State or, as the case may be, the Welsh Ministers think fit: see the Ancient Monuments and Archaeological Areas Act 1979 s 34(1). As to the meaning of 'person' see PARA 803 note 16. The Secretary of State must consult with the Historic Buildings and Monuments Commission for England before making an appointment in relation to an area situated in England: s 34(1) (amended by the National Heritage Act 1983 s 33(3), Sch 4 para 55). As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

3 As to the meaning of 'archaeological investigation' see PARA 1013 note 12.

4 As to the meaning of 'area of archaeological importance' see PARA 1043 note 3.

5 Ie by the Ancient Monuments and Archaeological Areas Act 1979 Pt II (ss 33-41): see PARA 1049 et seq. As to the meaning of 'functions' see PARA 1007 note 4.

6 The 'investigating authority' for an area of archaeological importance is the person for the time being holding appointment as such under the Ancient Monuments and Archaeological Areas Act 1979 s 34 or (if there is no such person) the Historic Buildings and Monuments Commission for England in a case where the area is situated in England, or the Welsh Ministers in a case where the area is situated in Wales: see s 41(2) (amended by the National Heritage Act 1983 Sch 4 para 59).

7 Ancient Monuments and Archaeological Areas Act 1979 s 34(1).

8 Ancient Monuments and Archaeological Areas Act 1979 s 34(2). Before cancelling an appointment the Secretary of State must consult with the Historic Buildings and Monuments Commission for England: see s 34(2) (amended by the National Heritage Act 1983 Sch 4 para 55).

9 As to the meaning of 'local authority' see PARA 1002 note 9.

10 See the Ancient Monuments and Archaeological Areas Act 1979 s 34(3). If the area is wholly or partly situated in Greater London the Secretary of State must also notify the Historic Buildings and Monuments Commission for England: see s 34(3) (amended by the Local Government Act 1985 s 6, Sch 2 para 2(3)). As to the meaning of 'Greater London' see PARA 859 note 4.

11 See the Ancient Monuments and Archaeological Areas Act 1979 s 34(4) (amended by the National Heritage Act 1983 Sch 4 para 55).

12 As to the meaning of 'writing' see PARA 805 note 14.

13 Ancient Monuments and Archaeological Areas Act 1979 s 34(5).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(B) Operations in Areas of Archaeological Importance/1049. Operations in archaeological areas.

1049. Operations in archaeological areas.

If any person¹ carries out, or causes or permits to be carried out, any operations on land² in an area of archaeological importance³ (being operations which disturb the ground⁴, flooding operations⁵ or tipping operations⁶) without first having served an operations notice⁷ relating to those operations⁸, or within six weeks of serving such a notice⁹, he is guilty of an offence¹⁰.

Where an operations notice is served with respect to operations which are to be carried out after clearance of any site¹¹, the developer¹² must notify the investigating authority¹³ for the area of archaeological importance in question of the clearance of the site immediately on completion of the clearance operations¹⁴.

A district council, London borough council or the Common Council of the City of London¹⁵ in whose area the site of the operations is wholly or partly situated may institute proceedings for an offence under these provisions in respect of operations on any site situated partly in its area notwithstanding that the operations are confined to a part of the site outside its area¹⁶. Any such council may take High Court proceedings for an injunction prohibiting those operations from being carried out in contravention of these provisions¹⁷ if it appears to it that: (1) any operations are being, or are about to be, carried out in contravention of these provisions on any site situated wholly or partly in its area¹⁸; and (2) the site contains, or is likely to contain, anything of archaeological or historical interest which will be disturbed, damaged, destroyed or removed without proper archaeological investigation¹⁹ if operations are carried out on the site without regard for the statutory provisions²⁰ relating to archaeological areas²¹.

In any proceedings for an offence under the above provisions it is a defence for the accused to prove either: (a) that he did not know and had no reason to believe that the site of the operations was within an area of archaeological importance²²; or (b) that the operations were urgently necessary in the interests of safety or health and that written²³ notice of the need for the operations was given to the Secretary of State or, in relation to Wales, the Welsh Ministers²⁴ as soon as reasonably practicable²⁵.

1 As to the meaning of 'person' see PARA 803 note 16.

2 References to operations on any land include references to operations in, under or over the land: Ancient Monuments and Archaeological Areas Act 1979 s 41(1)(c). As to the meaning of 'land' see PARA 1002 note 6.

3 As to the meaning of 'area of archaeological importance' see PARA 1043 note 3.

4 See the Ancient Monuments and Archaeological Areas Act 1979 s 35(2)(a). In any proceedings for an offence under s 35 consisting in carrying out, or causing or permitting to be carried out, any operations which disturb the ground, it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid or prevent such disturbance of the ground: s 37(5). As to defences generally see the text to notes 22-25. As to the standard of proof on the accused see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1370-1371.

5 See the Ancient Monuments and Archaeological Areas Act 1979 s 35(2)(b). As to the meaning of 'flooding operations' see PARA 1012 note 2.

6 See the Ancient Monuments and Archaeological Areas Act 1979 s 35(2)(c). As to the meaning of 'tipping operations' see PARA 1012 note 2.

7 'Operations notice' means a notice complying with the Ancient Monuments and Archaeological Areas Act 1979 s 35(4), (5) (see PARA 1050): see ss 35(3), 41(1)(a). For exemptions from the requirement to serve such a notice see PARA 1052. As to the service of notices and documents see PARA 1006.

8 Ancient Monuments and Archaeological Areas Act 1979 s 35(1)(a).

9 Ancient Monuments and Archaeological Areas Act 1979 s 35(1)(b).

10 Ancient Monuments and Archaeological Areas Act 1979 s 35(1). The penalty for such an offence is, on summary conviction, a fine not exceeding the statutory maximum (s 35(9)(a)) or, on conviction on indictment, a fine (s 35(9)(b)). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. A person who has an enforcement function in relation to an offence under the Ancient Monuments and Archaeological Areas Act 1979 is a regulator for the purposes of the Regulatory Enforcement and Sanctions Act 2008: see **ADMINISTRATIVE LAW**.

11 References to the clearance of any site are references to the demolition and removal of any existing building or other structure on the site and the removal of any other materials on it so as to clear the surface of the land, but do not include the levelling of the surface or the removal of materials from below the surface: Ancient Monuments and Archaeological Areas Act 1979 s 41(1)(d).

12 'Developer' means the person carrying out or proposing to carry out the operations in question: see the Ancient Monuments and Archaeological Areas Act 1979 ss 35(3), 41(1)(a).

13 As to the meaning of 'investigating authority' see PARA 1048 note 6.

14 Ancient Monuments and Archaeological Areas Act 1979 s 35(7). 'Clearance operations' means operations undertaken for the purpose of or in connection with the clearance of any site: see s 41(1)(e). If, in a case falling within s 35(7), the developer carries out, or causes or permits to be carried out, any of the operations to which the operations notice relates without having first notified the investigating authority of the clearance of the site, s 35 has effect in relation to those operations as if the operations notice had not been served: s 35(8). Section 35 has effect in relation to land in a National Park as if any notice required under it to be served on a local authority were required instead to be served on the National Park authority: Environment Act 1995 Sch 9 para 10(2). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526.

15 As to local government areas and authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. The Ancient Monuments and Archaeological Areas Act 1979 s 35 has effect, in relation to any land within the Broads (as defined by the Norfolk and Suffolk Broads Act 1988: see **WATER AND WATERWAYS** vol 101 (2009) PARA 735), as if the Broads Authority were the district council (to the exclusion of the authority which is otherwise the district council for the area in question) and the Broads were its local authority area: Ancient Monuments and Archaeological Areas Act 1979 s 35(11) (added by the Norfolk and Suffolk Broads Act 1988 s 2(5), Sch 3 para 30(2)). As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734. The Ancient Monuments and Archaeological Areas Act 1979 s 35 has effect in relation to land in a National Park as if the functions conferred on a local authority by virtue of s 35 had been conferred instead on the National Park authority: Environment Act 1995 Sch 9 para 10(2).

16 Ancient Monuments and Archaeological Areas Act 1979 ss 35(10), 41(1)(b). Section 35(10) is expressed to be without prejudice to the Local Government Act 1972 s 222: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 573.

17 Ie in contravention of the Ancient Monuments and Archaeological Areas Act 1979 s 35.

18 Ancient Monuments and Archaeological Areas Act 1979 s 35(10)(a). See also note 16.

19 As to the meaning of 'archaeological investigation' see PARA 1013 note 12.

20 Ie the Ancient Monuments and Archaeological Areas Act 1979 Pt II (ss 33-41).

21 Ancient Monuments and Archaeological Areas Act 1979 s 35(10)(b). See also note 16.

22 Ancient Monuments and Archaeological Areas Act 1979 s 37(6)(a). See also note 4. As to orders designating areas of archaeological importance as local land charges see PARA 1043 note 2.

23 As to the meaning of 'written' see PARA 805 note 14.

24 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672,

art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

25 Ancient Monuments and Archaeological Areas Act 1979 s 37(6)(b). See also note 4.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(B) Operations in Areas of Archaeological Importance/1050. Operations notice.

1050. Operations notice.

An operations notice¹ must be in the prescribed form² and must specify: (1) the operations to which it relates; (2) the site on which they are to be carried out; (3) the date on which it is proposed to begin them; and (4) where they are to be carried out after clearance of the site³, the developer's⁴ estimated date for completion of the clearance operations⁵. The notice must be accompanied by a certificate in the prescribed form⁶.

The operations notice must be served⁷ by the developer: (a) in the case of land in England⁸, on the district council, London borough council or the Common Council of the City of London or, as the case may be, on each such council in whose area the site is wholly or partly situated⁹; (b) in the case of land in Wales, on the council of each county or county borough in which the site of the operations is wholly or partly situated¹⁰; or (c) where the developer is any such council, on the Secretary of State or, in relation to Wales, the Welsh Ministers¹¹. Regulations made by the Secretary of State or the Welsh Ministers may prescribe the steps to be taken by any council on whom an operations notice is so served¹².

1 As to the meaning of 'operations notice' see PARA 1049 note 7.

2 Ancient Monuments and Archaeological Areas Act 1979 s 35(4)(c). 'Prescribed' means prescribed by regulations made by the Secretary of State or, in relation to Wales, the Welsh Ministers: see s 61(1). As to the making of regulations see PARA 1005. For the prescribed form see the Operations in Areas of Archaeological Importance (Forms of Notice etc) Regulations 1984, SI 1984/1285, reg 2, Sch 1 Pt I (modified in relation to areas of archaeological importance within a National Park by SI 1995/2803; SI 1996/1243). As to the meaning of 'area of archaeological importance' see PARA 1043 note 3.

The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 As to the meaning of 'clearance of the site' see PARA 1049 note 11.

4 As to the meaning of 'developer' see PARA 1049 note 12.

5 Ancient Monuments and Archaeological Areas Act 1979 s 35(4)(a). As to the meaning of 'clearance operations' see PARA 1049 note 14.

6 Ancient Monuments and Archaeological Areas Act 1979 s 35(4)(b). As to such certificates see s 36; and PARA 1051. As to the prescribed form of certificate see the Operations in Areas of Archaeological Importance (Forms of Notice etc) Regulations 1984, SI 1984/1285, reg 3, Sch 1 Pt II. In relation to any operations proposed to be carried out on Crown land otherwise than by or on behalf of the Crown, an operations notice served under the Ancient Monuments and Archaeological Areas Act 1979 s 35 is not effective for the purposes of that section unless it is accompanied by a certificate from the appropriate authority in the prescribed form consenting to the exercise in relation to that land in connection with those operations of the powers conferred by s 38 (see PARA 1053) and s 40 (see PARA 1055): s 50(3). As to the meaning of 'Crown land' see PARA 1003 note 1. As to the meaning of 'appropriate authority' see PARA 1003 note 6.

7 As to the service of notices and documents see PARA 1006.

8 As to the meaning of 'England' see PARA 804 note 2.

9 Ancient Monuments and Archaeological Areas Act 1979 ss 35(5)(a), 41(1)(b) (s 35(a) amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 56(2)). As to local government areas and authorities in

England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. The Ancient Monuments and Archaeological Areas Act 1979 s 35 has effect in relation to land in a National Park as if any notice required under it to be served on a local authority were required instead to be served on the National Park authority, and the functions conferred on a local authority by virtue of that section had been conferred instead on the National Park authority: Environment Act 1995 Sch 9 para 10(2). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526. The Ancient Monuments and Archaeological Areas Act 1979 s 35 has effect, in relation to any land within the Broads (as defined by the Norfolk and Suffolk Broads Act 1988: see **WATER AND WATERWAYS** vol 101 (2009) PARA 735), as if the Broads Authority were the district council (to the exclusion of the authority which is otherwise the district council for the area in question) and the Broads were its local authority area: Ancient Monuments and Archaeological Areas Act 1979 s 35(11) (added by the Norfolk and Suffolk Broads Act 1988 s 2(5), Sch 3 para 30(2)). As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734.

10 Ancient Monuments and Archaeological Areas Act 1979 s 35(5)(aa) (added by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 56(2)).

11 Ancient Monuments and Archaeological Areas Act 1979 s 35(5)(c).

12 Ancient Monuments and Archaeological Areas Act 1979 s 35(6). A district council, London borough council or the Common Council of the City of London on whom an operations notice is served must: (1) within seven days of receipt of the notice serve a copy of it (together with the certificate and any other documents accompanying the notice) on the investigating authority appointed for the relevant area of archaeological importance, or where no particular authority is so appointed, on the Historic Buildings and Monuments Commission for England (Operations in Areas of Archaeological Importance (Forms of Notice etc) Regulations 1984, SI 1984/1285, reg 4(a); Ancient Monuments and Archaeological Areas Act 1979 s 41(1)(b)); and (2) if the operations described in the notice are to be carried out after clearance of the site, advise the developer in writing within 14 days of receipt of the notice of the name and address of the relevant investigating authority and of his duty under the Ancient Monuments and Archaeological Areas Act 1979 s 35(7) (see PARA 1049) to notify the investigating authority of the clearance of the site immediately on completion of the clearance operations (Operations in Areas of Archaeological Importance (Forms of Notice etc) Regulations 1984, SI 1984/1285, reg 4(b)). These provisions are modified in relation to any area of archaeological importance within a National Park: see reg 4 (modified by SI 1995/2803; SI 1996/1243; SI 2005/421). As to the meaning of 'investigating authority' see PARA 1048 note 6. As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'writing' see PARA 805 note 14.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(B) Operations in Areas of Archaeological Importance/1051. Certificate to accompany operations notice.

1051. Certificate to accompany operations notice.

A person¹ is qualified to issue a certificate to accompany an operations notice² if he either: (1) has an interest in the site of the operations which, apart from any restrictions imposed by law, entitles him to carry out the operations in question³; or (2) has a right to enter on and take possession of that site under the statutory powers⁴ of entry on land subject to compulsory purchase⁵. Statutory undertakers⁶ are qualified to issue a certificate if they are entitled by or under any enactment to carry out the operations in question⁷.

Any such certificate must: (a) be signed by or on behalf of a person or persons qualified⁸ to issue it⁹; (b) state that the person issuing the certificate has an interest within head (1) or, as the case may be, a right within head (2) above or, in the case of a certificate issued by statutory undertakers, state that it is so issued and specify the enactment by or under which they are entitled to carry out the operations in question¹⁰; and (c) if the person issuing the certificate is not the developer¹¹, state that he has authorised the developer to carry out the operations¹².

If any person issues a certificate which purports to comply with these requirements and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with these requirements and which contains a statement which is false or misleading in a material particular, he is guilty of an offence¹³.

1 As to the meaning of 'person' see PARA 803 note 16.

2 Ie a certificate for the purposes of the Ancient Monuments and Archaeological Areas Act 1979 s 35(4)(b): see PARA 1050. As to the meaning of 'operations notice' see PARA 1049 note 7.

3 Ancient Monuments and Archaeological Areas Act 1979 s 36(1)(a). As to the meaning of 'operations on any land' see PARA 1049 note 2.

4 Ie under the Compulsory Purchase Act 1965 s 11(1) or s 11(2): see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 639, 645.

5 Ancient Monuments and Archaeological Areas Act 1979 s 36(1)(b).

6 'Statutory undertakers' means: (1) persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power; (2) the Civil Aviation Authority, a universal postal service provider in connection with the provision of a universal postal service and any other authority, body or undertakers which by virtue of any enactment are to be treated as statutory undertakers for any of the purposes of the Town and Country Planning Act 1990 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1009); and (3) any other authority, body or undertakers specified in an order made by the Secretary of State or, in relation to Wales, the Welsh Ministers under this provision: Ancient Monuments and Archaeological Areas Act 1979 s 61(2) (amended by the Gas Act 1986 s 67(4), Sch 9 Pt I; Water Act 1989 s 190(1), Sch 25 para 58; Electricity Act 1989 s 112(4), Sch 18; Airports Act 1986 s 83(5), Sch 6 Pt I; Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 43(2); Coal Industry Act 1994 s 67(1), (8), Sch 9 para 22, Sch 11 Pt II; SI 2001/1149). The undertaking of a universal postal service provider so far as relating to the provision of a universal postal service must be taken to be his statutory undertaking for the purposes of the Ancient Monuments and Archaeological Areas Act 1979; and references in the Act to his undertaking must be construed accordingly: s 61(2A) (added by SI 2001/1149). As to the meaning of 'enactment' see PARA 1008 note 1. As to the Civil Aviation

Authority see **AIR LAW** vol 2 (2008) PARA 50. As to the provision of a universal postal service see **POST OFFICE** vol 36(2) (Reissue) PARA 24.

The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4. At the date at which this volume states the law no order had been made under the Ancient Monuments and Archaeological Areas Act 1979 s 61(2). As to the making of orders see PARA 1005.

7 Ancient Monuments and Archaeological Areas Act 1979 s 36(2).

8 Ie qualified in accordance with the Ancient Monuments and Archaeological Areas Act 1979 s 36(1) or s 36(2): see the text to notes 1-7.

9 Ancient Monuments and Archaeological Areas Act 1979 s 36(3)(a).

10 Ancient Monuments and Archaeological Areas Act 1979 s 36(3)(b).

11 As to the meaning of 'developer' see PARA 1049 note 12.

12 Ancient Monuments and Archaeological Areas Act 1979 s 36(3)(c).

13 Ancient Monuments and Archaeological Areas Act 1979 s 36(4). The penalty for such an offence is, on summary conviction, a fine not exceeding level 3 on the standard scale: s 36(4) (amended by the Criminal Justice Act 1982 s 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. A person who has an enforcement function in relation to an offence under the Ancient Monuments and Archaeological Areas Act 1979 is a regulator for the purposes of the Regulatory Enforcement and Sanctions Act 2008: see **ADMINISTRATIVE LAW**.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(B) Operations in Areas of Archaeological Importance/1052. Exemptions.

1052. Exemptions.

The requirement to give an operations notice¹ does not apply to any operations² carried out with the consent of the investigating authority³ for the area of archaeological importance⁴ in question⁵; nor to the carrying out of any operations for which development consent has been granted⁶.

The Secretary of State or, in relation to Wales, the Welsh Ministers⁷ may by order⁸ direct that the requirements are not to apply to the carrying out, or to the carrying out by any class or description of persons⁹ specified in the order, of operations of any class or description so specified¹⁰. The Secretary of State or the Welsh Ministers may direct¹¹ that any exemption conferred by such an order is not to apply to the carrying out on any land specified in the direction, or to the carrying out on any land so specified by any class or description of persons so specified, of operations of any class or description so specified, and may withdraw any such direction¹².

1 Le the requirement under the Ancient Monuments and Archaeological Areas Act 1979 s 35: see PARA 1049. As to the meaning of 'operations notice' see PARA 1049 note 7.

2 As to the meaning of 'operations on any land' see PARA 1049 note 2.

3 As to the meaning of 'investigating authority' see PARA 1048 note 6.

4 As to the meaning of 'area of archaeological importance' see PARA 1043 note 3.

5 Ancient Monuments and Archaeological Areas Act 1979 s 37(1).

6 Ancient Monuments and Archaeological Areas Act 1979 s 37(1A) (added by the Planning Act 2008 s 36, Sch 2 paras 16, 19). As to development consent see **TOWN AND COUNTRY PLANNING**.

7 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

8 As to the making of orders see PARA 1005.

9 As to the meaning of 'person' see PARA 803 note 16.

10 Ancient Monuments and Archaeological Areas Act 1979 s 37(2). Any such exemption may be either unconditional or subject to any conditions specified in the order: s 37(2). Section 35 does not apply to the carrying out of operations of the following descriptions, subject to any particular conditions mentioned in the heads below: see the Areas of Archaeological Importance (Notification of Operations) (Exemption) Order 1984, SI 1984/1286, art 2. The operations are:

37 (1) operations in connection with the use of land of agriculture, horticulture or forestry; provided that such operations do not disturb the ground below a depth of 600 millimetres (Schedule para 1);

38 (2) operations in connection with the landscaping (including screening by the erection of fences or walls), layout, planting, or maintenance of public or private gardens, grounds or parks; provided that such operations do not disturb the ground below a depth of 600 millimetres (Schedule para 2);

- 39 (3) tunnelling or other operations affecting the ground in the area only at a depth of 10 metres or more (Schedule para 3);
- 40 (4) mining operations, provided that the operations are carried out in accordance with the Code of Practice for Minerals Operators dated April 1982 (Schedule para 4);
- 41 (5) works of repair, renewal or maintenance or emergency works carried out by a drainage body or a navigation authority (Schedule para 5);
- 42 (6) operations for the repair, maintenance, relaying or resurfacing of a highway within the meaning of the Highways Act 1980 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 7) or of a footpath as defined in that Act (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 64), or of a railway; provided that such operations do not disturb the ground below a depth of 600 millimetres or below the existing foundations, if deeper (Schedule para 6);
- 43 (7) operations for the repair, maintenance or renewal of mains, pipes, cables or other apparatus connected with the supply of electricity, gas, water, drainage services, sewerage services, highway or transport authority services or telecommunication services (Schedule para 7);
- 44 (8) operations for the installation or laying of new mains, pipes, cables or other apparatus connected with the supply of electricity, gas, water, drainage services, sewerage services or telecommunication services where there is a duty by or under any enactment to undertake those operations and to do so within six months of the duty first arising (Schedule para 8);
- 45 (9) operations for the erection or repositioning of street lighting columns not involving excavations to a depth exceeding 1.5 metres (Schedule para 9);
- 46 (10) further operations on a site, wholly specified as the site of other operations in an operations notice already served, provided the further operations are begun at least six weeks after, but not more than five years after, the giving of that notice (Schedule para 10);
- 47 (11) operations for which scheduled monument consent is granted (Schedule para 11).

'Drainage body' (**WATER AND WATERWAYS** vol 101 (2009) PARA 573) and 'navigation authority' (see **WATER AND WATERWAYS** vol 100 (2009) PARA 189) have the same meanings as in the Land Drainage Act 1976; and 'mining operations' means the winning and working of minerals in, on or under land, whether by surface or underground working: Areas of Archaeological Importance (Notification of Operations) (Exemption) Order 1984, SI 1984/1286, art 1(3). The order applies only to operations in areas of archaeological importance in England and Wales: art 1(2). As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'land' see PARA 1002 note 6. As to the meaning of 'enactment' see PARA 1008 note 1. As to the meaning of 'month' see PARA 803 note 11. As to the meaning of 'scheduled monument consent' see PARA 1013.

11 Any such direction does not take effect until notice of it has been served on the occupier or, if there is no occupier, on the owner of the land in question: Ancient Monuments and Archaeological Areas Act 1979 s 37(4). As to the service of notices and documents see PARA 1006. As to the meaning of 'owner' see PARA 1006 note 6.

12 Ancient Monuments and Archaeological Areas Act 1979 s 37(3). The Secretary of State must consult with the Historic Buildings and Monuments Commission for England before giving or withdrawing any such direction in relation to land situated in England: s 37(3) (amended by the National Heritage Act 1983 Sch 4 para 56). As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(B) Operations in Areas of Archaeological Importance/1053. Power to enter and excavate.

1053. Power to enter and excavate.

Where an operations notice¹ is served with respect to any operations², the investigating authority³ for the area of archaeological importance⁴ in which the site of operations is situated, has a right to enter, at any reasonable time, the site and any land⁵ giving access to the site, for either or both of the following purposes:

- 372 (1) inspecting the site, including any buildings or other structures on it, with a view to recording any matters of archaeological or historical interest and determining whether it would be desirable to carry out any excavations in the site⁶; and
- 373 (2) observing any operations carried out on the site with a view to examining and recording any objects or other material of archaeological or historical interest, and recording any matters of archaeological or historical interest, discovered during the course of those operations⁷.

Where an operations notice is served with respect to any operations⁸, and the investigating authority serves notice⁹ of its intention to excavate the site¹⁰, the investigating authority has a right to carry out excavations in the site for the purpose of archaeological investigation¹¹ at any time during the period allowed for excavation¹². Where the investigating authority has served notice¹³ of its intention to excavate the site¹⁴, and the six-week period beginning with the date of service of the operations notice has expired¹⁵, that authority has a right to carry out excavations in the site for the purpose of archaeological investigation notwithstanding that the period allowed for excavation¹⁶ has not yet begun, but only if the authority does not thereby obstruct the execution on the site by the developer of clearance operations¹⁷ or any other operations to which the requirements as to operations notices¹⁸ do not apply¹⁹. The investigating authority may at any reasonable time enter the site and any land giving access to the site for the purpose of exercising a right²⁰ to excavate the site²¹.

If operations to which the operations notice relates are carried out on the site at a time when the investigating authority has a right to excavate the site²², the requirements as to operations notices²³ have effect in relation to those operations as if the operations notice had not been served, subject, however, to any exemption or defence²⁴ relating thereto²⁵.

At any time, the Secretary of State²⁶ or, in relation to Wales, the Welsh Ministers may direct²⁷ that: (a) an investigating authority must comply with any conditions specified in the direction in exercising any of its powers under the above provisions in relation to any site²⁸; or (b) any such power is to cease to be exercisable by an investigating authority in relation to the whole or any part of any site²⁹.

1 As to the meaning of 'operations notice' see PARA 1049 note 7.

2 As to the meaning of 'operations on any land' see PARA 1049 note 2.

3 As to the meaning of 'investigating authority' see PARA 1048 note 6.

4 As to the meaning of 'area of archaeological importance' see PARA 1043 note 3.

5 As to the meaning of 'land' see PARA 1002 note 6.

6 Ancient Monuments and Archaeological Areas Act 1979 s 38(1)(a). As to the treatment and preservation of finds see s 54; and PARA 1060. For supplementary provisions as to powers of entry see s 44; and PARAS 1058-1059.

7 Ancient Monuments and Archaeological Areas Act 1979 s 38(1)(b).

8 Ancient Monuments and Archaeological Areas Act 1979 s 38(2)(a).

9 The investigating authority only has a right to excavate the site of any operations in accordance with the Ancient Monuments and Archaeological Areas Act 1979 s 38(2) if before the end of the period of four weeks beginning with the date of service of the operations notice the authority: (1) serves notice in the prescribed form of its intention to excavate on the developer (s 38(3)(a)); and (2) serves a copy of that notice on any council served with the operations notice and also (unless the functions of the investigating authority are for the time being exercisable by the Secretary of State or the Welsh Ministers) on the Secretary of State or the Welsh Ministers (s 38(3)(b)); and (3) where the site in question is situated in England, serves a copy of that notice on the Historic Buildings and Monuments Commission for England (unless the investigating authority is for the time being the Commission) (s 38(3)(c) (added by the National Heritage Act 1983 s 33(3), Sch 4 para 57)). As to the service of notices and documents see PARA 1006. As to the meaning of 'developer' see PARA 1049 note 12. 'Prescribed' means prescribed by regulations made by the Secretary of State or, in relation to Wales, the Welsh Ministers: see the Ancient Monuments and Archaeological Areas Act 1979 s 61(1). As to the making of regulations see PARA 1005. For the prescribed form of notice see the Operations in Areas of Archaeological Importance (Forms of Notice etc) Regulations 1984, SI 1984/1285, reg 5, Sch 2. As to the meaning of 'functions' see PARA 1007 note 4. As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2.

The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

10 Ancient Monuments and Archaeological Areas Act 1979 s 38(2)(b).

11 As to the meaning of 'archaeological investigation' see PARA 1013 note 12.

12 Ancient Monuments and Archaeological Areas Act 1979 s 38(2). The period allowed for excavation is the period of four months and two weeks beginning: (1) with the date immediately following the end of the period of six weeks beginning with the date of service of the operations notice (s 38(4)(a)); or (2) where the operations specified in the operations notice are to be carried out after clearance of the site, with the date of receipt of the notification of clearance of the site required under s 35(7) (see PARA 1049) or with the date first mentioned in head (1) above (whichever last occurs) (s 38(4)(b)); or (3) with any earlier date agreed between the investigating authority and the developer (s 38(4)(c)). As to the meaning of 'month' see PARA 803 note 11. As to the meaning of 'clearance of any site' see PARA 1049 note 11.

13 Ie in accordance with the Ancient Monuments and Archaeological Areas Act 1979 s 38(3): see note 9.

14 Ancient Monuments and Archaeological Areas Act 1979 s 38(5)(a).

15 Ancient Monuments and Archaeological Areas Act 1979 s 38(5)(b).

16 Ie in accordance with the Ancient Monuments and Archaeological Areas Act 1979 s 38(4): see note 12.

17 As to the meaning of 'clearance operations' see PARA 1049 note 14.

18 Ie the Ancient Monuments and Archaeological Areas Act 1979 s 35: see PARA 1049.

19 Ancient Monuments and Archaeological Areas Act 1979 s 38(5).

20 Ie in accordance with the Ancient Monuments and Archaeological Areas Act 1979 s 38(2) or (5): see the text to notes 8-19.

21 Ancient Monuments and Archaeological Areas Act 1979 s 38(6).

22 Ie in accordance with the Ancient Monuments and Archaeological Areas Act 1979 s 38(2) or (5): see the text to notes 8-19.

23 le the Ancient Monuments and Archaeological Areas Act 1979 s 35: see PARA 1049.

24 le any exemption or defence conferred by or under the Ancient Monuments and Archaeological Areas Act 1979 s 37: see PARAS 1049, 1052.

25 Ancient Monuments and Archaeological Areas Act 1979 s 38(7).

26 The Secretary of State must consult with the Historic Buildings and Monuments Commission for England before giving, varying or revoking a direction under the Ancient Monuments and Archaeological Areas Act 1979 s 38(8) in relation to a site situated in England: s 38(8) (amended by the National Heritage Act 1983 Sch 4 para 57). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

27 On giving such a direction the Secretary of State or the Welsh Ministers must serve a copy of it on the investigating authority (Ancient Monuments and Archaeological Areas Act 1979 s 38(9)(a)), any council served with the operations notice in question (s 38(9)(b)), the developer (s 38(9)(c)), and any person other than the developer by whom the certificate accompanying the operations notice in accordance with s 35(4)(b) (see PARA 1050) was issued (s 38(9)(d)); and on varying or revoking any such direction the Secretary of State or the Welsh Ministers must notify the same persons, giving particulars of the effect of any variation (s 38(9)). On giving such a direction in relation to a site situated in England, the Secretary of State must send a copy of the direction to the Historic Buildings and Monuments Commission for England, if the investigating authority is not the Commission (s 38(10) (s 38(10), (11) added by the National Heritage Act 1983 Sch 4 para 57)); and on varying or revoking such a direction in relation to a site situated in England, the Secretary of State must notify the Commission, giving particulars of the effect of any variation, if the investigating authority is not the Commission (Ancient Monuments and Archaeological Areas Act 1979 s 38(11) (as so added)).

28 Ancient Monuments and Archaeological Areas Act 1979 s 38(8)(a). The Secretary of State or the Welsh Ministers may vary or revoke any direction given under this provision: s 38(8). See also note 27.

29 Ancient Monuments and Archaeological Areas Act 1979 s 38(8)(b).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(B) Operations in Areas of Archaeological Importance/1054. Power to enter and investigate in advance of operations notice.

1054. Power to enter and investigate in advance of operations notice.

If an authority possessing compulsory purchase powers¹ notifies the investigating authority² for any area of archaeological importance³ that it proposes to carry out, or to authorise someone else to carry out, on any site in the area, any operations in respect of which an operations notice must be served⁴, other than exempt operations⁵, the investigating authority has a right to enter, at any reasonable time, the site and any land giving access to it, for the purpose of inspecting the site, including any buildings or other structures on it, with a view to recording any matters of archaeological or historical interest and determining whether it would be desirable to carry out any excavations in the site⁶. This right of entry ceases at the end of one month⁷ beginning with the day on which it is first exercised⁸. The Secretary of State or, in relation to Wales, the Welsh Ministers⁹ may give directions as to the exercise of this power¹⁰.

1 'Authority possessing compulsory purchase powers' means any person or body of persons who could be or have been authorised to acquire an interest in land compulsorily: Ancient Monuments and Archaeological Areas Act 1979 s 39(5). As to the meaning of 'person' see PARA 803 note 16. As to the meaning of 'land' see PARA 1002 note 6.

2 As to the meaning of 'investigating authority' see PARA 1048 note 6.

3 As to the meaning of 'area of archaeological importance' see PARA 1043 note 3.

4 'Operations of a description mentioned in the Ancient Monuments and Archaeological Areas Act 1979 s 35(2): see PARA 1049.

5 'Exempt operations' means operations excluded from the application of the Ancient Monuments and Archaeological Areas Act 1979 s 35 by an order under s 37 (see PARA 1052): s 39(1).

6 See the Ancient Monuments and Archaeological Areas Act 1979 s 39(1). As to supplementary provisions as to powers of entry see s 44; and PARAS 1058-1059.

7 As to the meaning of 'month' see PARA 803 note 11.

8 Ancient Monuments and Archaeological Areas Act 1979 s 39(2).

9 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

10 The Ancient Monuments and Archaeological Areas Act 1979 s 38(8) (see PARA 1053) applies in relation to the power of entry under s 39 as it applies in relation to the powers of an investigating authority under that section: s 39(3). Section 38(9) (see PARA 1053) does not apply in relation to a direction under s 38(8) with respect to the exercise of the power of entry under s 39, but on giving any such direction the Secretary of State or the Welsh Ministers must serve a copy of the direction on each of the following persons, that is to say: (1) the investigating authority (s 39(4)(a)); (2) the authority possessing compulsory purchase powers (s 39(4)(b)); (3) the owner and (if the owner is not the occupier) the occupier of the site in question (s 39(4)(c)); and, in the case of the Secretary of State, on the Historic Buildings and Monuments Commission for England (if the investigating authority is not the Commission) (see s 39(4)(d) (added by the National Heritage Act 1983 s 33, Sch 4 para 58)). On varying or revoking any such direction the Secretary of State or the Welsh Ministers must notify the same persons (giving particulars of the effect of any variation): Ancient Monuments and Archaeological Areas Act

1979 s 39(4). As to the meaning of 'owner' see PARA 1006 note 6. As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the service of notices and documents see PARA 1006.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/C. ARCHAEOLOGICAL AREAS/(B) Operations in Areas of Archaeological Importance/1055. Other powers of entry.

1055. Other powers of entry.

Where an operations notice¹ is served with respect to any operations:

- 374 (1) any person² duly authorised in writing³ by the Secretary of State or, in relation to Wales, the Welsh Ministers⁴ may at any reasonable time enter the site of the operations for the purpose of inspecting the site, including any building or other structure on it, and recording any matters of archaeological or historical interest observed in the course of that inspection⁵; and
- 375 (2) any person duly authorised in writing by the Historic Buildings and Monuments Commission for England⁶ may at any reasonable time enter the site for the purpose of inspecting any building or other structure on the site and recording any matters of archaeological or historical interest observed in the course of that inspection⁷.

1 As to the meaning of 'operations notice' see PARA 1049 note 7.

2 As to the meaning of 'person' see PARA 803 note 16.

3 As to the meaning of 'writing' see PARA 805 note 14.

4 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

5 Ancient Monuments and Archaeological Areas Act 1979 s 40(a).

6 The Ancient Monuments and Archaeological Areas Act 1979 s 40(b) refers to the Royal Commission on Historical Monuments which has now been merged with the Historic Buildings and Monuments Commission for England; see PARA 803.

7 Ancient Monuments and Archaeological Areas Act 1979 s 40(b).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/D. MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS/(A) Restrictions on the Use of Metal Detectors/1056. Restrictions on the use of metal detectors in a protected place.

D. MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS

(A) RESTRICTIONS ON THE USE OF METAL DETECTORS

1056. Restrictions on the use of metal detectors in a protected place.

A person¹ commits an offence if, without the written² consent of the Historic Buildings and Monuments Commission for England³, in the case of a place situated in England, or of the Welsh Ministers⁴, in the case of a place situated in Wales⁵, he:

- 376 (1) uses a metal detector⁶ in a protected place⁷; or
- 377 (2) removes any object of archaeological or historical interest which he has discovered by the use of a metal detector in a protected place⁸.

A consent granted by the Commission or the Welsh Ministers may be granted either unconditionally or subject to conditions⁹. If any person (a) in using a metal detector in a protected place in accordance with any such consent¹⁰; or (b) in removing or otherwise dealing with any object which he has discovered by the use of a metal detector in a protected place in accordance with any such consent¹¹, fails to comply with any condition attached to the consent, he is guilty of an offence¹².

In any proceedings for an offence under head (1) above, it is a defence for the accused to prove that he used the metal detector for a purpose other than detecting or locating objects of archaeological or historical interest¹³; and in any proceedings for an offence under head (1) or (2) above, it is a defence for the accused to prove that he had taken all reasonable precautions to find out whether the place where he used the metal detector was a protected place and did not believe that it was¹⁴.

A metal detector ranks as apparatus for wireless telegraphy and its use may also require the authority of a licence issued by OFCOM¹⁵.

1 As to the meaning of 'person' see PARA 803 note 16. As to offences by bodies corporate see PARA 1008.

2 As to the meaning of 'written' see PARA 805 note 14.

3 As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2.

4 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

5 See the Ancient Monuments and Archaeological Areas Act 1979 s 42(1), (3) (both amended by the National Heritage Act 1983 s 33, Sch 4 para 60).

6 'Metal detector' means any device designed or adapted for detecting or locating any metal or mineral in the ground: Ancient Monuments and Archaeological Areas Act 1979 s 42(2).

7 See the Ancient Monuments and Archaeological Areas Act 1979 s 42(1) (as amended: see note 5). The penalty for such an offence is, on summary conviction, a fine not exceeding level 3 on the standard scale: Ancient Monuments and Archaeological Areas Act 1979 s 42(1) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

'Protected place' means any place which is either: (1) the site of a scheduled monument or of any monument under the ownership or guardianship of the Secretary of State, the Welsh Ministers, the Historic Buildings and Monuments Commission for England or a local authority by virtue of the Ancient Monuments and Archaeological Areas Act 1979 (s 42(2)(a)); or (2) situated in an area of archaeological importance (s 42(2)(b) (amended by the National Heritage Act 1983 s 33, Sch 4 para 60)). As to the meaning of 'scheduled monument' see PARA 1010. As to the meaning of 'monument' see PARA 1009. As to monuments under the ownership or guardianship of the persons listed see the Ancient Monuments and Archaeological Areas Act 1979 ss 10-12, 21; and PARA 1026 et seq. As to the meaning of 'local authority' see PARA 1002 note 9. As to the meaning of 'area of archaeological importance' see PARA 1043 note 3.

8 See the Ancient Monuments and Archaeological Areas Act 1979 s 42(3) (as amended: see note 5). The penalty for such an offence is, on summary conviction, a fine not exceeding the statutory maximum, or, on conviction on indictment, a fine: see s 42(3). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

9 Ancient Monuments and Archaeological Areas Act 1979 s 42(4) (amended by the National Heritage Act 1983 s 33, Sch 4 para 60).

10 See the Ancient Monuments and Archaeological Areas Act 1979 s 42(5)(a) (amended by the National Heritage Act 1983 s 33, Sch 4 para 60).

11 Ancient Monuments and Archaeological Areas Act 1979 s 42(5)(b).

12 Ancient Monuments and Archaeological Areas Act 1979 s 42(5). The penalty for such an offence is, in a case falling within head (a) in the text, on summary conviction, a fine not exceeding level 3 on the standard scale; and in a case falling within head (b) in the text, on summary conviction, a fine not exceeding the statutory maximum, or, on conviction on indictment, a fine: see s 42(4).

13 Ancient Monuments and Archaeological Areas Act 1979 s 42(6). As to the standard of proof on the accused see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1370-1371.

14 Ancient Monuments and Archaeological Areas Act 1979 s 42(7). As to the listing of a scheduled monument, a guardianship deed, or a designation order in respect of an area of archaeological importance, as a local land charge see PARAS 1010, 1028, 1043.

15 See the Wireless Telegraphy Act 2006 s 8; the Wireless Telegraphy (Exemption) Regulations 2003, SI 2003/74; and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 228.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/D. MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS/(B) Powers of Entry/1057. Power of entry for survey and valuation.

(B) POWERS OF ENTRY

1057. Power of entry for survey and valuation.

At any reasonable time, any authorised person¹ may enter any land² for the purpose of surveying it³, or estimating its value, in connection with any proposal to acquire that or any other land under the Ancient Monuments and Archaeological Areas Act 1979⁴, or in connection with any claim for compensation under the Act in respect of any such acquisition or for any damage to that or any other land⁵.

Where under this power a person proposes to carry out works⁶ authorised for the purposes mentioned above, he may not carry out those works unless the prior notice of intended entry⁷ included notice of his intention to carry out those works⁸, and if the land in question is held by statutory undertakers⁹ who object to the proposed works on the grounds that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking, the works must not be carried out except with the authority of the Secretary of State or, in relation to Wales, the Welsh Ministers¹⁰.

1 A person is authorised under this provision if he is an officer of the Valuation Office of Her Majesty's Revenue and Customs or a person duly authorised in writing by the Secretary of State or, in relation to Wales, the Welsh Ministers, or other authority proposing to make the acquisition which is the occasion of the survey or valuation or, as the case may be, from whom, in accordance with the Ancient Monuments and Archaeological Areas Act 1979, compensation in respect of the damage is recoverable: s 43(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). As to the Valuation Office see **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARA 287. As to the meaning of 'person' see PARA 803 note 16. As to the meaning of 'writing' see PARA 805 note 14. As to compensation for damage see the Ancient Monuments and Archaeological Areas Act 1979 s 46; and PARA 1062).

The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 As to the meaning of 'land' see PARA 1002 note 6.

3 Subject to the Ancient Monuments and Archaeological Areas Act 1979 s 44(9) (see the text to notes 8-11), the power to survey land conferred by s 43 is to be construed as including power to search and bore for the purposes of ascertaining the nature of the subsoil or the presence of minerals in it: s 43(3).

4 As to acquisition of land under the Ancient Monuments and Archaeological Areas Act 1979 see PARAS 1026-1027, 1031-1032.

5 Ancient Monuments and Archaeological Areas Act 1979 s 43(1). As to the exercise of the power of entry see PARAS 1058-1059.

6 Ie any works authorised by virtue of the Ancient Monuments and Archaeological Areas Act 1979 s 43(3): see note 3.

7 Ie the notice under the Ancient Monuments and Archaeological Areas Act 1979 s 44(2)(a): see PARA 1058.

8 See the Ancient Monuments and Archaeological Areas Act 1979 s 44(9)(a).

9 As to the meaning of 'statutory undertakers' see PARA 1051 note 6.

10 Ancient Monuments and Archaeological Areas Act 1979 s 44(9)(b).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/D. MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS/(B) Powers of Entry/1058. Prerequisites to entry.

1058. Prerequisites to entry.

In the exercise of any power of entry under the Ancient Monuments and Archaeological Areas Act 1979¹, other than the power conferred for the purposes of survey and valuation², no person³ may enter any building or part of a building occupied as a dwelling house without the occupier's consent⁴.

In the exercise of any power of entry under the Act, other than the power to enter to execute works urgently necessary⁵, no person may demand admission as of right to any land⁶ which is occupied unless prior notice of the intended entry has been given⁷ to the occupier: (1) where the purpose of the entry is to carry out any works⁸ on the land, not less than 14 days before the day on which admission is demanded⁹; or (2) in any other case, not less than 24 hours before admission is demanded¹⁰.

If so required by or on behalf of the owner¹¹ or occupier of the land, a person seeking to enter it in exercise of any power of entry under the Act must produce evidence of his authority before entering¹².

1 Powers of entry arise under the Ancient Monuments and Archaeological Areas Act 1979 s 5(1) (entry to execute works urgently necessary: see PARA 1023); s 6 (entry to inspect scheduled monument: see PARA 1024); s 13(5) (entry on site of monument under guardianship: see PARA 1029); s 15(1) (entry on land under guardianship: see PARA 1031); s 26(1) (entry on land believed to contain ancient monuments: see PARA 1041); s 38(6) (entry to excavate after operations notice: see PARA 1053); s 39(1) (entry to investigate in advance of operations notice: see PARA 1054); s 40 (entry to inspect and record: see PARA 1055); and s 43(1) (entry to survey and value: see PARA 1057). As to the exercise of powers of entry see PARA 1059.

2 Ie the power conferred by the Ancient Monuments and Archaeological Areas Act 1979 s 43(1): see PARA 1057.

3 As to the meaning of 'person' see PARA 803 note 16.

4 Ancient Monuments and Archaeological Areas Act 1979 s 44(1).

5 Ie the power of entry under the Ancient Monuments and Archaeological Areas Act 1979 s 5: see PARA 1023.

6 As to the meaning of 'land' see PARA 804 note 30.

7 As to the service of notices and documents see PARA 1006.

8 This does not apply to excavations in exercise of the power under the Ancient Monuments and Archaeological Areas Act 1979 s 26 (see PARA 1041) or s 38 (see PARA 1053): see s 44(2)(a). As to the meaning of 'works' see PARA 1012 note 2.

9 Ancient Monuments and Archaeological Areas Act 1979 s 44(2)(a). Where the entry is under s 43 for the purpose of survey and valuation and it is intended to carry out works authorised by s 43(3), the notice must also give notice of that intention: see s 44(9)(a); and PARA 1057.

10 Ancient Monuments and Archaeological Areas Act 1979 s 44(2)(b).

11 As to the meaning of 'owner' see PARA 1006 note 6.

12 Ancient Monuments and Archaeological Areas Act 1979 s 44(3).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/D. MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS/(B) Powers of Entry/1059. Exercise of power of entry.

1059. Exercise of power of entry.

Any power of entry under the Ancient Monuments and Archaeological Areas Act 1979¹ is to be construed as including power for any person² entering any land³ in exercise of the power to take with him any assistance or equipment reasonably required for the purpose to which his entry relates and to do there anything reasonably necessary for carrying out that purpose⁴. Where a person enters any land in exercise of any power of entry under the Act for the purpose of carrying out any archaeological investigation⁵ or examination of the land⁶, he may⁷ take and remove such samples of any description as appear to him to be reasonably required for the purpose of archaeological analysis⁸.

Where any works⁹ are being carried out on any land in relation to which any power of entry under the Act is exercisable, a person acting in the exercise of that power must comply with any reasonable¹⁰ requirements or conditions imposed by the person by whom the works are being carried out for the purpose of preventing interference with, or delay to, the works¹¹.

Any person who intentionally obstructs a person acting in the exercise of any power of entry under the Act is guilty of an offence¹².

1 As to powers of entry under the Ancient Monuments and Archaeological Areas Act 1979 see PARA 1058 note 1.

2 As to the meaning of 'person' see PARA 803 note 16.

3 As to the meaning of 'land' see PARA 1002 note 6.

4 Ancient Monuments and Archaeological Areas Act 1979 s 44(4).

5 As to the meaning of 'archaeological investigation' see PARA 1013 note 12.

6 'Archaeological examination of any land' means any examination or inspection of the land, including any buildings or other structures on it, for the purpose of obtaining and recording any information of archaeological or historical interest: Ancient Monuments and Archaeological Areas Act 1979 s 61(5).

7 Ie without prejudice to the Ancient Monuments and Archaeological Areas Act 1979 s 44(4): see the text to notes 1-4.

8 Ancient Monuments and Archaeological Areas Act 1979 s 44(5).

9 The Ancient Monuments and Archaeological Areas Act 1979 s 44(6) does not apply where the works in question are being carried out in contravention of s 2(1) or (6) (see PARA 1035) or s 35 (see PARA 1049): see s 44(7). As to the meaning of 'works' see PARA 1012 note 2.

10 Any requirements or conditions so imposed are not to be regarded as reasonable for this purpose if compliance with them would in effect frustrate the exercise of the power of entry or the purpose of the entry: Ancient Monuments and Archaeological Areas Act 1979 s 44(7).

11 Ancient Monuments and Archaeological Areas Act 1979 s 44(6).

12 Ancient Monuments and Archaeological Areas Act 1979 s 44(8). The penalty for such an offence is, on summary conviction, a fine not exceeding level 3 on the standard scale: see s 44(8) (amended by the Criminal Justice Act 1982 s 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to offences by bodies corporate see PARA 1008.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/D. MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS/(B) Powers of Entry/1060. Treatment and preservation of finds.

1060. Treatment and preservation of finds.

Where a person¹ enters any land² in exercise of any power of entry under the Ancient Monuments and Archaeological Areas Act 1979³:

- 378 (1) to carry out any excavations in the land or any operations affecting any ancient monument⁴ situated in, on or under the land⁵;
- 379 (2) to observe any operations on the land in exercise of any of certain statutory powers⁶; or
- 380 (3) to carry out any archaeological examination of the land⁷,

he may take temporary custody of any object of archaeological or historical interest discovered during the course of those excavations or operations or, as the case may be, during the course of that examination, and remove it from its site for the purpose of examining, testing, treating, recording or preserving it⁸.

The Secretary of State or, in relation to Wales, the Welsh Ministers⁹, or other authority by or on whose behalf the power of entry was exercised may not retain the object without the owner's¹⁰ consent beyond the period reasonably required for examining and recording it and carrying out any test or treatment which appears desirable for the purpose of archaeological investigation¹¹ or analysis or with a view to restoring or preserving the object¹².

Nothing in these provisions affects any right of the Crown under the Treasure Act 1996¹³.

1 As to the meaning of 'person' see PARA 803 note 16.

2 As to the meaning of 'land' see PARA 804 note 30.

3 As to powers of entry under the Ancient Monuments and Archaeological Areas Act 1979 see PARA 1058 note 1.

4 As to the meaning of 'ancient monument' see PARA 1025.

5 Ancient Monuments and Archaeological Areas Act 1979 s 54(1)(a).

6 Ancient Monuments and Archaeological Areas Act 1979 s 54(1)(b). The powers concerned are those conferred by s 6(3)(a) or s 6(4)(b) or s 6A(2)(a) (see PARA 1024): see s 54(1)(b) (amended by the National Heritage Act 1983 s 33(3), Sch 4 para 65).

7 Ancient Monuments and Archaeological Areas Act 1979 s 54(1)(c). As to the meaning of 'archaeological examination of the land' see PARA 1059 note 6.

8 Ancient Monuments and Archaeological Areas Act 1979 s 54(1).

9 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

10 As to the meaning of 'owner' see PARA 1006 note 6.

11 As to the meaning of 'archaeological investigation' see PARA 1013 note 12.

12 Ancient Monuments and Archaeological Areas Act 1979 s 54(2).

13 Ancient Monuments and Archaeological Areas Act 1979 s 54(3) (amended by the Treasure Act 1996 s 14(2)). As to the law relating to treasure see PARA 1084 et seq. As to the application of the Ancient Monuments and Archaeological Areas Act 1979 to Crown land see PARA 1003.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/D. MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS/(C) Financial Provisions/1061. Expenditure on archaeological investigation.

(C) FINANCIAL PROVISIONS

1061. Expenditure on archaeological investigation.

The Historic Buildings and Monuments Commission for England¹, in relation to any land² in England, or the Welsh Ministers³, in relation to any land in Wales, may undertake, or assist in, or defray or contribute towards the cost of, an archaeological investigation⁴ of any land which it or they consider may contain an ancient monument⁵ or anything else of archaeological or historical interest⁶. Any local authority⁷ may undertake, or assist in, or defray or contribute towards the cost of an archaeological investigation of any land in or in the vicinity of its area, being land which it considers may contain an ancient monument or anything else of archaeological or historical interest⁸.

The Commission, Welsh Ministers or any local authority may publish the results of any archaeological investigation undertaken, assisted, or wholly or partly financed by them under these provisions in such manner and form as they think fit⁹.

1 As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2.

2 As to the meaning of 'land' see PARA 1002 note 6.

3 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 As to the meaning of 'archaeological investigation' see PARA 1013 note 12.

5 As to the meaning of 'ancient monument' see PARA 1025. The reference to an ancient monument in relation to the Commission is to be construed as if the reference in s 61(12)(b) (definition of 'ancient monument': see PARA 1025) to the Secretary of State were to the Commission: s 45(1A) (as added: see note 6).

6 See the Ancient Monuments and Archaeological Areas Act 1979 s 45(1), (1A) (s 45(1), (4) amended, (1A) added, by the National Heritage Act 1983 s 33(3), Sch 4 para 61). Without prejudice to the application, by virtue of the Ancient Monuments and Archaeological Areas Act 1979 s 53 (see PARAS 1002, 1004, 1031), of any other provisions of the Act to land which is not within Great Britain, the powers conferred by s 45 are exercisable in relation to any land which is not within England or Wales and which forms part of the sea bed within the seaward limits of United Kingdom territorial waters adjacent to the coast of England or, as the case may be, Wales: see s 45(4) (as so amended). As to the meanings of 'Great Britain' and 'United Kingdom' see PARA 804 note 2. As to territorial waters see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

7 As to the meaning of 'local authority' see PARA 1002 note 9. The provisions of the Ancient Monuments and Archaeological Areas Act 1979 s 45(2), (3) apply, in relation to the Broads as if the Broads Authority were a local authority: see s 52A; and PARA 1002. The provisions of the Ancient Monuments and Archaeological Areas Act 1979 s 45(2), (3) have effect as if a National Park authority were a local authority for the purposes of the Act and as if the relevant park were the authority's area: see the Environment Act 1995 Sch 9 para 10. As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526.

8 Ancient Monuments and Archaeological Areas Act 1979 s 45(2).

9 Ancient Monuments and Archaeological Areas Act 1979 s 45(3) (amended by the National Heritage Act 1983 Sch 4 para 61).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/D. MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS/(C) Financial Provisions/1062. Compensation for damage.

1062. Compensation for damage.

Where, in the exercise in relation to any land¹ of any power to enter, or to do anything, on any land under the Ancient Monuments and Archaeological Areas Act 1979², any damage has been caused to that land or to any chattels on that land, any person³ interested in that land or those chattels may recover compensation⁴ in respect of that damage from the Secretary of State, the Welsh Ministers, the Historic Buildings and Monuments Commission for England⁵ or other authority by or on whose behalf the power was exercised⁶.

Where any such damage is caused in the exercise of any such power by or on behalf of any person for the time being holding appointment as the investigating authority⁷ for an area of archaeological importance⁸, compensation is recoverable in accordance with these provisions from the Commission if the area in question is situated in England⁹, or from the Welsh Ministers if the area in question is situated in Wales¹⁰.

1 As to the meaning of 'land' see PARA 1002 note 6.

2 ie any power to enter, or to do anything, on any land under the Ancient Monuments and Archaeological Areas Act 1979 ss 6, 6A (see PARA 1024); s 26 (see PARA 1041); s 38 (see PARA 1053); s 39 (see PARA 1054); s 40 (see PARA 1055); or s 43 (see PARA 1057): s 46(3) (amended by the National Heritage Act 1983 s 33(3), Sch 4 para 62).

3 As to the meaning of 'person' see PARA 803 note 16.

4 Any claim for compensation under the Ancient Monuments and Archaeological Areas Act 1979 must be made within the time and in the manner prescribed: s 47(1). 'Prescribed' means prescribed by regulations made by the Secretary of State or the Welsh Ministers: see s 61(1). As to the prescribed forms see the Ancient Monuments (Claims for Compensation) (England) Regulations 1991, SI 1991/2512, reg 2; Ancient Monuments (Claims for Compensation) (Wales) Regulations 1991, SI 1991/2647, reg 2. Any question of disputed compensation under the Act must be referred to and determined by the Upper Tribunal: s 47(2) (amended by SI 2009/1307). As to the Upper Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720. The Land Compensation Act 1961 s 4 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 716-717) applies in relation to the determination of any such question, but the references in s 4 to the acquiring authority are to be construed as references to the authority by which the compensation claimed is payable under the Ancient Monuments and Archaeological Areas Act 1979: see s 47(3) (amended by SI 2009/1307).

The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

5 As to the Historic Buildings and Monuments Commission for England see PARA 803.

6 Ancient Monuments and Archaeological Areas Act 1979 s 46(1) (amended by the National Heritage Act 1983 Sch 4 para 62). Compensation payable under the Ancient Monuments and Archaeological Areas Act 1979 s 46 carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 641) from the date of entry on the land until payment: see the Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. Payments on account of interest may be made: see s 80(2).

7 As to the meaning of 'investigating authority' see PARA 1048 note 6.

8 As to the meaning of 'area of archaeological importance' see PARA 1043 note 3.

9 As to the meaning of 'England' see PARA 804 note 2.

10 Ancient Monuments and Archaeological Areas Act 1979 s 46(2) (amended by the National Heritage Act 1983 Sch 4 para 62).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(2) ARCHAEOLOGICAL SITES AND MONUMENTS/(ii) Ancient Monuments and Archaeological Areas/D. MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS/(C) Financial Provisions/1063. Grants to the Architectural Heritage Fund.

1063. Grants to the Architectural Heritage Fund.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹ may make grants to the Architectural Heritage Fund². The Historic Buildings and Monuments Commission for England³ may make grants to the fund for the purpose of enabling it to perform its functions⁴ in, or in relation to, England⁵.

A grant under these provisions may be made subject to such conditions as the Secretary of State, the Welsh Ministers or the Commission (as the case may be) may think fit to impose⁶.

1 The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 Ancient Monuments and Archaeological Areas Act 1979 s 49(1) (amended by the National Heritage Act 1983 s 33(3), Sch 4 para 63). 'Architectural Heritage Fund' means the institution registered under that name under the Charities Act 1993: Ancient Monuments and Archaeological Areas Act 1979 s 49(3) (added by the National Heritage Act 1983 Sch 4 para 63; and amended by the Charities Act 1993 s 98(1), Sch 6 para 30). As to the registration of charities see **CHARITIES** vol 8 (2010) PARA 304 et seq. Information on the Architectural Heritage Fund may be found on the funds website at www.ahfund.org.uk.

3 As to the Historic Buildings and Monuments Commission for England see PARA 803.

4 As to the meaning of 'functions' see PARA 1007 note 4.

5 Ancient Monuments and Archaeological Areas Act 1979 s 49(1A) (added by the National Heritage Act 1983 Sch 4 para 63). As to the meaning of 'England' see PARA 804 note 2.

6 Ancient Monuments and Archaeological Areas Act 1979 s 49(2) (amended by the National Heritage Act 1983 Sch 4 para 63).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(3) HISTORIC SHIPWRECKS AND MILITARY REMAINS/(i) Historic Shipwrecks/1064. Protection of sites of historic wrecks.

(3) HISTORIC SHIPWRECKS AND MILITARY REMAINS

(i) Historic Shipwrecks

1064. Protection of sites of historic wrecks.

If the Secretary of State or, in relation to Wales, the Welsh Ministers¹, as the case may be, are satisfied with respect to any site in United Kingdom waters² that:

- 381 (1) it is, or may prove to be, the site of a vessel lying wrecked on or in the sea bed³; and
- 382 (2) on account of the historical, archaeological or artistic importance of the vessel, or of any objects contained or formerly contained in it which may be lying on the sea bed in or near the wreck, the site ought to be protected from unauthorised interference⁴,

he or they may by order⁵ designate an area round the site as a 'restricted area'⁶.

Such an order must identify the site where the vessel lies or formerly lay, or is supposed to lie or have lain⁷, and: (a) the restricted area must be all within such distance of the site (so identified) as is specified in the order, but excluding any area above high water mark of ordinary spring tides⁸; and (b) the distance specified for the purposes of head (a) above must be whatever the Secretary of State or the Welsh Ministers think appropriate to ensure protection for the wreck⁹.

A person who interferes with a restricted area commits an offence¹⁰.

1 The functions of the Secretary of State under the Protection of Wrecks Act 1973 ss 1, 3 in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 'United Kingdom waters' means any part of the sea within the seaward limits of United Kingdom territorial waters and includes any part of a river within the ebb and flow of ordinary spring tides; and 'sea' includes any estuary or arm of the sea: see the Protection of Wrecks Act 1973 s 3(1). As to the meaning of 'United Kingdom' see PARA 804 note 2. As to the United Kingdom's territorial waters see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

3 Protection of Wrecks Act 1973 s 1(1)(a). References to the 'sea bed' include any area submerged at high water of ordinary spring tides: s 3(1).

4 Protection of Wrecks Act 1973 s 1(1)(b).

5 Before making such an order, the Secretary of State or the Welsh Ministers must consult with such persons as they consider appropriate having regard to the purposes of the order, although this consultation may be dispensed with if they are satisfied that the order should be made as a matter of immediate urgency: see the Protection of Wrecks Act 1973 s 1(4). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627. As to the meaning of 'person' see PARA 803 note 16. Any such order must be made by statutory instrument subject, in the case of an order made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament: see s 3(2). As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516. As to the procedure in relation to subordinate legislation made by the Welsh

Ministers see the Government of Wales Act 2006 Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. An order may be varied or revoked by a subsequent order, and the Secretary of State or the Welsh Ministers must revoke any such order if he or they are of opinion that there is not, or is no longer, any wreck in the area which requires protection under the Protection of Wrecks Act 1973: see s 3(2), (2)(a). Numerous orders have been made; see eg the Protection of Wrecks (Designation) (England) Order 2007, SI 2007/61; Protection of Wrecks (Designation) (England) (No 2) Order 2007, SI 2007/721; Protection of Wrecks (Designation) (England) Order 2008, SI 2008/2775; Protection of Wrecks (Designation) (England) Order 2009, SI 2009/2394.

- 6 Protection of Wrecks Act 1973 s 1(1).
- 7 Protection of Wrecks Act 1973 s 1(2).
- 8 Protection of Wrecks Act 1973 s 1(2)(a).
- 9 Protection of Wrecks Act 1973 s 1(2)(b).
- 10 See PARA 1065.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(3) HISTORIC SHIPWRECKS AND MILITARY REMAINS/(i) Historic Shipwrecks/1065. Interfering with sites of historic shipwrecks.

1065. Interfering with sites of historic shipwrecks.

A person¹ commits an offence² if, in a restricted area³, he does any of the following things otherwise than under the authority of a licence granted by the Secretary of State or, in relation to Wales, the Welsh Ministers⁴:

- 383 (1) he tampers with, damages or removes any part of a vessel lying wrecked on or in the sea bed⁵, or any object formerly contained in such a vessel⁶; or
- 384 (2) he carries out diving or salvage operations directed to the exploration of any wreck or to removing objects from it or from the sea bed, or uses equipment constructed or adapted for any purpose of diving or salvage operations⁷; or
- 385 (3) he deposits, so as to fall and lie abandoned on the sea bed, anything which, if it were to fall on the site of a wreck (whether it so falls or not), would wholly or partly obliterate the site or obstruct access to it or damage any part of the wreck⁸;
- 386 (4) he causes or permits any of those things to be done by others in a restricted area, otherwise than under the authority of such a licence⁹.

Where a person is authorised by a licence granted by the Secretary of State or the Welsh Ministers to carry out diving or salvage operations, it is an offence for any other person to obstruct him, or cause or permit him to be obstructed, in doing anything which is authorised by the licence¹⁰.

However, nothing is to be regarded as constituting an offence where it is done by a person:

- 387 (a) in the course of any action taken by him for the sole purpose of dealing with an emergency of any description¹¹; or
- 388 (b) in exercising, or seeing to the exercise of, functions conferred by or under an enactment¹², local or other, on him or a body for which he acts¹³; or
- 389 (c) out of necessity due to stress of weather or navigational hazards¹⁴.

1 As to the meaning of 'person' see PARA 803 note 16.

2 A person guilty of an offence under the Protection of Wrecks Act 1973 s 1 is liable, on summary conviction, to a fine of not more than the prescribed sum, or, on conviction on indictment, to a fine; and proceedings for such an offence may be taken, and the offence may for all incidental purposes be treated as having been committed, at any place in the United Kingdom where he is for the time being: s 3(4) (amended by the Magistrates' Courts Act 1980 s 32). As to the prescribed sum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141. As to the meaning of 'United Kingdom' see PARA 804 note 2. A person who has an enforcement function in relation to an offence under the Ancient Monuments and Archaeological Areas Act 1979 is a regulator for the purposes of the Regulatory Enforcement and Sanctions Act 2008: see **ADMINISTRATIVE LAW**.

3 As to the designation of restricted areas see PARA 1064.

4 A licence granted by the Secretary of State or the Welsh Ministers for these purposes must be in writing: Protection of Wrecks Act 1973 s 1(5). As to the meaning of 'writing' see PARA 805 note 14. The Secretary of State or the Welsh Ministers must, in respect of a restricted area, grant licences only to persons who appear to him or them either: (1) to be competent and properly equipped to carry out salvage operations in a manner appropriate to the historical, archaeological or artistic importance of any wreck which may be lying in the area and of any objects contained or formerly contained in a wreck (s 1(5)(a)(i)); or (2) to have any other legitimate reason for doing in the area that which can only be done under the authority of a licence (s 1(5)(a)(ii)). A licence may be granted subject to conditions or restrictions, and may be varied or revoked by the Secretary of State or the Welsh Ministers at any time after giving not less than one week's notice to the licensee: s 1(5)(b). Anything

done contrary to any condition or restriction is to be treated for the purposes of s 1(3) as done otherwise than under the authority of the licence: s 1(5)(c).

The functions of the Secretary of State under the Protection of Wrecks Act 1973 ss 1, 3, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

- 5 As to the meaning of 'sea bed' see PARA 1064 note 3.
- 6 Protection of Wrecks Act 1973 s 1(3)(a).
- 7 Protection of Wrecks Act 1973 s 1(3)(b).
- 8 Protection of Wrecks Act 1973 s 1(3)(c).
- 9 Protection of Wrecks Act 1973 s 1(3).
- 10 Protection of Wrecks Act 1973 s 1(6). As to the penalty for such offence see note 2.
- 11 Protection of Wrecks Act 1973 s 3(3)(a).
- 12 As to the meaning of 'enactment' see PARA 805 note 5.
- 13 Protection of Wrecks Act 1973 s 3(3)(b).
- 14 Protection of Wrecks Act 1973 s 3(3)(c).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(3) HISTORIC SHIPWRECKS AND MILITARY REMAINS/(i) Historic Shipwrecks/1066. General provisions as to wreck.

1066. General provisions as to wreck.

The Merchant Shipping Act 1995 contains provision as to wreck¹ including provision as to vessels in distress, dealing with wreck, unclaimed wreck, offences, and removal of wrecks. These provisions are covered in detail elsewhere in this work².

1 See the Merchant Shipping Act 1995 Pt IX (ss 224-255).

2 See **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 987 et seq; and **CROWN PROPERTY** vol 12(1) (Reissue) PARA 270 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(3) HISTORIC SHIPWRECKS AND MILITARY REMAINS/(ii) Military Remains/1067. Protection of military remains.

(ii) Military Remains

1067. Protection of military remains.

The Protection of Military Remains Act 1986 secures the protection from unauthorised interference of the remains of military aircraft and vessels that have crashed, sunk or been stranded and of associated human remains¹. Provision is made as to offences relating to such interference² and for the grant of licences to carry out certain works or operations³. These provisions are covered in detail elsewhere in this work⁴.

- 1 See the Protection of Military Remains Act 1986 s 1.
- 2 See the Protection of Military Remains Act 1986 ss 2, 6, 7.
- 3 See the Protection of Military Remains Act 1986 ss 4, 5.
- 4 See **ARMED FORCES** vol 2(2) (Reissue) PARA 270 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(4) HISTORIC BUILDINGS/(i) European Convention/1068. European architectural heritage.

(4) HISTORIC BUILDINGS

(i) European Convention

1068. European architectural heritage.

The Convention for the Protection of the Architectural Heritage of Europe¹ aims to set out the framework for a common policy for the conservation and enhancement of the architectural heritage². 'Architectural heritage' comprises the following permanent properties:

- 390 (1) monuments: all buildings and structures of conspicuous historical, archaeological, artistic, scientific, social or technical interest, including their fixtures and fittings;
- 391 (2) groups of buildings: homogeneous groups of urban or rural buildings conspicuous for their historical, archaeological, artistic, scientific, social or technical interest which are sufficiently coherent to form topographically definable units;
- 392 (3) sites: the combined works of man and nature, being areas which are partially built upon and sufficiently distinctive and homogeneous to be topographically definable and are of conspicuous historical, archaeological, artistic, scientific, social or technical interest³.

The states party to the convention⁴ undertake to:

- 393 (a) maintain inventories of the monuments, groups of buildings and sites to be protected⁵, and to take statutory measures to protect the architectural heritage⁶;
- 394 (b) to implement appropriate supervision and authorisation procedures for the legal protection of the properties in question and to prevent the disfigurement, dilapidation or demolition of protected properties⁷;
- 395 (c) to prohibit the removal, in whole or in part, of any protected monument, except where the material safeguarding of such monuments makes removal imperative⁸;
- 396 (d) to provide financial support for the maintenance and restoration of the architectural heritage and to encourage the conservation of this heritage⁹;
- 397 (e) to promote measures for the general enhancement of the environment in the surroundings of monuments, within groups of buildings and within sites¹⁰;
- 398 (f) to ensure that infringements of the law protecting the architectural heritage are met with a relevant and adequate response by the competent authority¹¹;
- 399 (g) to adopt integrated conservation policies which include the protection of the architectural heritage as an essential town and country planning objective and ensure that this requirement is taken into account at all stages both in the drawing up of development plans and in the procedures for authorising work¹²;
- 400 (h) to foster, taking account of the architectural and historical character of the heritage, the use of protected properties in the light of the needs of contemporary life and the adaptation, when appropriate, of old buildings for new uses¹³;
- 401 (i) while recognising the value of permitting public access to protected properties, to take such action as may be necessary to ensure that the consequences of permitting this access, especially any structural development, do

- not adversely affect the architectural and historical character of such properties and their surroundings¹⁴;
- 402 (j) to develop public awareness of the value of conserving the architectural heritage, both as an element of cultural identity and as a source of inspiration and creativity for present and future generations¹⁵;
- 403 (k) to promote training in the various occupations and craft trades involved in the conservation of the architectural heritage¹⁶;
- 404 (l) to exchange information on their conservation policies and to provide mutual assistance and training¹⁷.

As regards the protection of architectural heritage in England and Wales provision is made for grants and loans for the preservation of historic buildings, related land and objects¹⁸, for the acquisition of such buildings, land and objects¹⁹, for the acceptance of endowments²⁰, for the listing of buildings and the creation of conservation areas²¹, and for the protection of historic gardens²². There is also a non-statutory register of historic battlefields²³.

1 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985).

2 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) preamble.

3 Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) art 1.

4 The convention was ratified by the United Kingdom on 13 November 1987.

5 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) art 2.

6 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) art 3.

7 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) art 4.

8 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) art 5.

9 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) arts 6, 8.

10 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) art 7.

11 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) art 9.

12 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) art 10.

13 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) art 11.

14 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) art 12.

15 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) art 15.

16 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) art 16.

17 See the Convention for the Protection of the Architectural Heritage of Europe (Council of Europe ETS No 121: Granada 1985) arts 17-20.

18 See PARA 1069 et seq.

19 See PARA 1072 et seq.

20 See PARAS 1076-1077.

21 See PARAS 1078-1079.

22 See PARAS 1080-1082.

23 See PARA 1083.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(4) HISTORIC BUILDINGS/(ii) Grants and Loans for Preservation of Historic Buildings etc/1069. Grants and loans for preservation of historic buildings etc in England.

(ii) Grants and Loans for Preservation of Historic Buildings etc

1069. Grants and loans for preservation of historic buildings etc in England.

The Historic Buildings and Monuments Commission for England¹ may make grants or loans² for the purpose of defraying, in whole or in part, any expenditure incurred or to be incurred in the repair or maintenance of:

- 405 (1) a building which is situated in England and which appears to the Commission to be of outstanding historic or architectural interest; or
- 406 (2) in the upkeep of any land which is situated in England and which comprises, or is contiguous or adjacent to, any such building; or
- 407 (3) in the repair or maintenance of any objects ordinarily kept in any such building, or
- 408 (4) in the upkeep of a garden or other land which is situated in England and which appears to the Commission to be of outstanding historic interest but which is not contiguous or adjacent to a building which appears to the Commission to be of outstanding historical or architectural interest³.

Where a grant is so made to the National Trust for Places of Historic Interest or Natural Beauty (the 'National Trust')⁴, the grant may, if the Commission thinks fit, be made by way of endowment, subject to such provisions, by way of trust, contract or otherwise, as may appear to the Commission to be requisite for securing that, so long as it is reasonably practicable to give effect to the purposes of the endowment, the sum granted will be retained and invested by the National Trust as a source of income for defraying the expenditure in respect of which the grant is made⁵.

Any grant or loan made under these provisions may be made subject to conditions imposed by the Commission for the purpose of securing public access to the whole or part of the property⁶ to which the grant or loan relates, or for other purposes, as the Commission may think fit⁷; and any such loan must be made on such terms as to repayment, payment of interest and otherwise as the Commission may determine⁸.

1 As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2. As to grants for the preservation of the historic buildings, their contents and land in Wales see PARA 1070.

2 See the Historic Buildings and Ancient Monuments Act 1953 s 3A(2) (s 3A added by the National Heritage Act 1983 s 33, Sch 4 para 3).

3 Historic Buildings and Ancient Monuments Act 1953 s 3A(1) (as added: see note 2). In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of the Historic Buildings and Ancient Monuments Act 1953 Pt I (ss 1-9) special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(1), (2); and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1171.

4 As to the National Trust see PARA 979.

5 Historic Buildings and Ancient Monuments Act 1953 s 3A(3) (as added: see note 2).

6 'Property' means real or personal property of any description: see the Historic Buildings and Ancient Monuments Act 1953 s 9(2).

7 Historic Buildings and Ancient Monuments Act 1953 s 3A(4) (as added: see note 2). As to the recovery of grants see PARA 1071.

8 Historic Buildings and Ancient Monuments Act 1953 s 3A(5) (as added: see note 2).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(4) HISTORIC BUILDINGS/(ii) Grants and Loans for Preservation of Historic Buildings etc/1070. Grants and loans for preservation of historic buildings etc in Wales.

1070. Grants and loans for preservation of historic buildings etc in Wales.

The Welsh Ministers¹ may make grants or loans² for the purpose of defraying, in whole or in part, any expenditure incurred or to be incurred:

- 409 (1) in the repair or maintenance of a building which is situated in Wales and which appears to them to be of outstanding historic or architectural interest; or
- 410 (2) in the upkeep of any land comprising, or contiguous or adjacent to, any such building; or
- 411 (3) in the repair or maintenance of any objects ordinarily kept in any such building, or
- 412 (4) in the upkeep of a garden or other land which is situated in Wales and appears to them to be of outstanding historic interest but which is not contiguous or adjacent to a building which appears to them to be of outstanding historic or architectural interest³.

Where a grant is so made to the National Trust for Places of Historic Interest or Natural Beauty (the National Trust)⁴, the grant may, if the Welsh Ministers think fit, be made by way of endowment, subject to such provisions, by way of trust, contract or otherwise, as may appear to the Welsh Ministers to be requisite for securing that, so long as it is reasonably practicable to give effect to the purposes of the endowment, the sum granted will be retained and invested by the National Trust and used as a source of income for defraying the expenditure in respect of which the grant is made⁵.

A grant or loan⁶ made under these provisions may be made subject to conditions imposed by the Welsh Ministers for the purposes of securing public access to the whole or part of the property⁷ to which the grant relates, or for other purposes, as they may think fit⁸; and any such loan must be made on such terms as to repayment, payment of interest and otherwise as the Welsh Ministers may determine⁹.

1 The functions of the Secretary of State under the Historic Buildings and Ancient Monuments Act 1953 and the Civic Amenities Act 1967, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4. As to the protection of the historic environment in Wales see further PARA 810.

2 The power conferred by the Historic Buildings and Ancient Monuments Act 1953 s 4(1) to make grants for the purposes mentioned therein includes power to make loans for those purposes, and references to grants in s 4(3) (see the text to notes 6-8) must be construed accordingly: Civic Amenities Act 1967 s 4(1).

3 See the Historic Buildings and Ancient Monuments Act 1953 s 4(1) (amended by the Town and Country Amenities Act 1974 s 12; and by the National Heritage Act 1983 s 33, Sch 4 para 4). In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of the Historic Buildings and Ancient Monuments Act 1953 Pt I (ss 1-9) special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(1), (2); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1171.

4 As to the National Trust see PARA 979.

- 5 Historic Buildings and Ancient Monuments Act 1953 s 4(2).
- 6 See note 2.
- 7 As to the meaning of 'property' see PARA 1069 note 6.
- 8 Historic Buildings and Ancient Monuments Act 1953 s 4(3). As to the recovery of grants see PARA 1071.
- 9 See the Civic Amenities Act 1967 s 4(2).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(4) HISTORIC BUILDINGS/(ii) Grants and Loans for Preservation of Historic Buildings etc/1071. Recovery of grants.

1071. Recovery of grants.

The following provisions apply to any grant¹ made for the preservation of historic buildings, their contents and adjoining land on terms that it is to be recoverable under these provisions, but any such grant is only to be regarded for these purposes as so made if, before or on making the grant, the Historic Buildings and Monuments Commission for England² or, as the case may be, the Welsh Ministers³ give to the grantee notice in writing⁴: (1) summarising the effect of these provisions⁵; and (2) specifying the period⁶ during which the grant is to be recoverable⁷ in the case of a grant made for certain specified purposes⁸. If any condition subject to which such a grant was made is contravened or not complied with, the Commission or the Welsh Ministers may recover the amount of the grant or such part of it as they think fit from the grantee⁹.

If, during the period specified under head (2) above in the case of such a grant made to any person¹⁰ for the purpose of defraying, in whole or in part, any expenditure on the repair, maintenance or upkeep of any property, the grantee disposes¹¹ of the relevant interest held by him in the property¹², the Commission or the Welsh Ministers may recover the amount of the grant or such part of it as they think fit from the grantee¹³.

1 Ie any grant under the Historic Buildings and Ancient Monuments Act 1953 s 3A (see PARA 1069) or s 4 (see PARA 1070).

2 As to the Historic Buildings and Monuments Commission for England see PARA 803.

3 The functions of the Secretary of State under the Historic Buildings and Ancient Monuments Act 1953, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

4 Historic Buildings and Ancient Monuments Act 1953 s 4A(1) (s 4A added by the Ancient Monuments and Archaeological Areas Act 1979 s 48(2); Historic Buildings and Ancient Monuments Act 1953 s 4A(1), (3), (4), (8) amended by the National Heritage Act 1983 s 33, Sch 4 para 5). As to the meaning of 'writing' see PARA 805 note 14.

5 Historic Buildings and Ancient Monuments Act 1953 s 4A(1)(a) (as added: see note 4).

6 The period so specified in the case of any grant must be a period beginning with the day on which the grant is made and ending not more than ten years after that day: Historic Buildings and Ancient Monuments Act 1953 s 4A(2) (as added: see note 4).

7 Ie in accordance with the Historic Buildings and Ancient Monuments Act 1953 s 4A(4): see the text to notes 10-13.

8 Historic Buildings and Ancient Monuments Act 1953 s 4A(1)(a) (as added: see note 4). The specified purposes are those mentioned in s 4A(4): see the text to notes 10-13. In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of the Historic Buildings and Ancient Monuments Act 1953 Pt I (ss 1-9) special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(1), (2); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1171.

9 Historic Buildings and Ancient Monument Act 1953 s 4A(3) (as added and amended: see note 4). Nothing in the Historic Buildings and Ancient Monuments Act 1953 s 4A(3), (4) (see the text to notes 10-13) is to be taken as conferring on the Commission or the Welsh Ministers a right to recover, by virtue of a breach of more than

one condition or disposals of several parts of an interest in property, amounts in the aggregate exceeding the amount of the grant: s 4A(8) (as so added and amended). As to the meaning of 'property' see PARA 1069 note 6.

10 As to the meaning of 'person' see PARA 803 note 16.

11 The Historic Buildings and Ancient Monuments Act 1953 s 4A(4) only applies where the grantee disposes of the relevant interest or any part of it by way of sale or exchange or lease for a term of not less than 21 years: s 4A(5) (as added: see note 4).

12 'Relevant interest' means the interest, or any part thereof, held by the grantee in the property on the day on which the grant is made: see the Historic Buildings and Ancient Monuments Act 1953 s 4A(4) (as added: see note 4).

13 Historic Buildings and Ancient Monuments Act 1953 s 4A(4) (as added and amended: see note 4). See also s 4A(8); and note 9. If a person becomes entitled by way of gift from the grantee, whether directly or indirectly, but otherwise than by way of will, to a part of the relevant interest, a disposal by the donee in any manner mentioned in s 4A(5) (see note 11) of the interest so acquired by him in the property, or any part of that interest, is treated for the purposes of s 4A(4) as a disposal by the grantee of a part of the relevant interest: s 4A(6) (as so added). If a person becomes entitled by way of any such gift to the whole of the relevant interest, s 4A(4) has effect, except for the purpose of determining the relevant interest, as if the donee were the grantee: s 4A(7) (as so added). 'Gift' includes devise, bequest, appointment, conveyance, assignment, transfer and any other assurance of property: s 9(2).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(4) HISTORIC BUILDINGS/(iii) Acquisition of Historic Buildings etc/1072. Acquisition by the Secretary of State or the Welsh Ministers of historic buildings etc.

(iii) Acquisition of Historic Buildings etc

1072. Acquisition by the Secretary of State or the Welsh Ministers of historic buildings etc.

Subject as provided below¹, the Secretary of State² or, in relation to Wales, the Welsh Ministers³ have power⁴:

413 (1) to acquire by agreement, whether by purchase, lease or otherwise, or to accept a gift⁵ of:

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26. (a) any building appearing to the Secretary of State or the Welsh Ministers to be one of outstanding historic or architectural interest⁶;

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27. (b) any land comprising, or contiguous or adjacent to, any such building⁷;

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414 (2) to purchase by agreement, or to accept a gift of, any objects which are or have been ordinarily kept in:

28. (a) a building which, or any interest in which, is vested in the Secretary of State or the Welsh Ministers, or a building which is under his or their control or management, being in either case a building appearing to the Secretary of State or the Welsh Ministers to be of outstanding historic or architectural interest⁸; or

29. (b) a building of which the Secretary of State or the Welsh Ministers are guardian under the Ancient Monuments and Archaeological Areas Act 1979⁹; or

30. (c) a building which, or any interest in which, is vested in the National Trust¹⁰;

20

415 (3) to make such arrangements¹¹ as the Secretary of State or the Welsh Ministers may think fit as to the management or custody of any property¹² so acquired or accepted by him or them, and as to the use of any such property, and to dispose of or otherwise deal with any such property as he or they may from time to time determine¹³.

The Secretary of State must consult with the Historic Buildings and Monuments Commission for England before acquiring or accepting any property under these provisions, and before taking any step by way of disposing of or otherwise dealing with any such property so acquired or accepted, other than any step taken by him in the course of managing or keeping the property and making arrangements as to its use; but this does not prevent the Secretary of State from acquiring or accepting any property without such consultation in a case where the acquisition or acceptance thereof appears to him to be a matter of immediate urgency¹⁴.

1 Le subject to the Historic Buildings and Ancient Monuments Act 1953 s 5(4): see the text to note 14.

2 As to the Secretary of State see PARA 802.

3 The functions of the Secretary of State under the Historic Buildings and Ancient Monuments Act 1953, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2,

Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the meaning of 'Wales' see PARA 802 note 4.

4 In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of the Historic Buildings and Ancient Monuments Act 1953 Pt I (ss 1-9) special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(1), (2); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1171.

5 As to the meaning of 'gift' see PARA 1071 note 13.

6 Historic Buildings and Ancient Monuments Act 1953 s 5(1)(a). As to the acceptance of endowments in respect of such buildings see s 8; and PARA 1076. Certain redundant places of worship may be acquired by the Secretary of State under s 5: see the Redundant Churches and Other Religious Buildings Act 1969 ss 4, 5; and **ECCLESIASTICAL LAW** vol 14 PARA 1134.

7 Historic Buildings and Ancient Monuments Act 1953 s 5(1)(b).

8 Historic Buildings and Ancient Monuments Act 1953 s 5(2)(a).

9 Historic Buildings and Ancient Monuments Act 1953 s 5(2)(b) (amended by the Ancient Monuments and Archaeological Areas Act 1979 s 64(2), Sch 4 para 3(1)). As to guardianship under the Ancient Monuments and Archaeological Areas Act 1979 see PARA 1028.

10 Historic Buildings and Ancient Monuments Act 1953 s 5(2)(c). As to the National Trust see PARA 979.

11 The Historic Buildings and Monuments Commission for England may be a party to such arrangements if the arrangements relate to property situated in England: Historic Buildings and Ancient Monuments Act 1953 s 5(3A) (added by the National Heritage Act 1983 s 33, Sch 4 para 6). As to the Historic Buildings and Monuments Commission for England see PARA 803. As to the meaning of 'England' see PARA 804 note 2.

12 As to the meaning of 'property' see PARA 1069 note 6.

13 See the Historic Buildings and Ancient Monuments Act 1953 s 5(3).

14 Historic Buildings and Ancient Monuments Act 1953 s 5(4) (amended by SI 2006/63). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(4) HISTORIC BUILDINGS/(iii) Acquisition of Historic Buildings etc/1073. Acquisition by English Heritage of historic buildings etc.

1073. Acquisition by English Heritage of historic buildings etc.

The Historic Buildings and Monuments Commission for England ('English Heritage')¹ has power², subject to the consent of the Secretary of State³, to acquire by agreement, whether by purchase, lease or otherwise, or to accept a gift⁴ of:

- 416 (1) any building which is situated in England⁵ and which appears to the Commission to be one of outstanding historic or architectural interest⁶;
- 417 (2) any building which is situated in England and in an area designated as a conservation area⁷ and which appears to the Commission to be of special historic or architectural interest⁸;
- 418 (3) any land which is situated in England and which comprises, or is contiguous or adjacent to, any building mentioned in head (1) or head (2) above⁹;
- 419 (4) any garden or other land which is situated in England and which appears to the Commission to be of outstanding historic interest but which is not contiguous or adjacent to a building which appears to the Commission to be of outstanding historic or architectural interest¹⁰.

The Commission also has power to purchase by agreement, or to accept a gift of, any objects which it would be historically appropriate to keep¹¹ in:

- 420 (a) a building which, or any interest in which, is vested in the Commission, or a building which is under its management or in its custody, being in either case a building appearing to the Commission to be of outstanding historic or architectural interest¹²; or
- 421 (b) a building of which the Commission is guardian under the Ancient Monuments and Archaeological Areas Act 1979¹³; or
- 422 (c) a building situated in England which, or any interest in which, is vested in the National Trust¹⁴.

The Commission may make such arrangements as it may think fit as to the management or custody of any property acquired or accepted by it under these provisions, and as to the use of any such property, and may dispose of, or otherwise deal with, any such property as it may from time to time determine¹⁵.

1 As to the Historic Buildings and Monuments Commission for England see PARA 803.

2 As to the power of the Commission to accept endowments see the Historic Buildings and Ancient Monuments Act 1953 ss 8A, 8B; and PARAS 1077, 1080. Certain redundant places of worship may be acquired by the Commission under s 8: see the Redundant Churches and Other Religious Buildings Act 1969 ss 4, 5; and **ECCLESIASTICAL LAW** vol 14 PARA 1134. In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of the Historic Buildings and Ancient Monuments Act 1953 Pt I (ss 1-9) special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(1), (2); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1171.

3 The Commission must not acquire or accept any property under the Historic Buildings and Ancient Monuments Act 1953 s 5A(1) without the consent of the Secretary of State, which may be given subject to such

conditions as he thinks fit: s 5A(4) (s 5A added by the National Heritage Act 1983 s 33, Sch 4 para 7). As to the Secretary of State see PARA 802. As to the meaning of 'property' see PARA 1069 note 6.

- 4 As to the meaning of 'gift' see PARA 1071 note 13.
- 5 As to the meaning of 'England' see PARA 804 note 2.
- 6 Historic Buildings and Ancient Monuments Act 1953 s 5A(1)(a) (as added: see note 3).
- 7 In under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 69: see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1169.
- 8 Historic Buildings and Ancient Monuments Act 1953 s 5A(1)(b) (as added (see note 3); and amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 4(1)).
- 9 Historic Buildings and Ancient Monuments Act 1953 s 5A(1)(c) (as added: see note 3).
- 10 Historic Buildings and Ancient Monuments Act 1953 s 5A(1)(d) (as added: see note 3).
- 11 For these purposes, an object is one which it would be historically appropriate to keep in a building if: (1) it is or has been ordinarily kept in the building (Historic Buildings and Ancient Monuments Act 1953 s 5A(5)(a) (as added: see note 3)); or (2) it is historically associated with the building or connected with a person or event historically associated with the building (s 5A(5)(b) (as so added)); or (3) objects of its kind were produced or used in a period falling within the lifetime of the building (s 5A(5)(c) (as so added)); or (4) the Commission is of opinion that it would for some other reason be historically appropriate to keep it in the building (s 5A(5)(d) (as so added)). As to the meaning of 'person' see PARA 803 note 16.
- 12 Historic Buildings and Ancient Monuments Act 1953 s 5A(2)(a) (as added: see note 3).
- 13 Historic Buildings and Ancient Monuments Act 1953 s 5A(2)(b) (as added: see note 3). As to guardianship under the Ancient Monuments and Archaeological Areas Act 1979 see PARA 1028.
- 14 Historic Buildings and Ancient Monuments Act 1953 s 5A(2)(c) (as added: see note 3). As to the National Trust see PARA 979.
- 15 Historic Buildings and Ancient Monuments Act 1953 s 5A(3) (as added: see note 3).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(4) HISTORIC BUILDINGS/(iii) Acquisition of Historic Buildings etc/1074. Grants by English Heritage for acquisition of historic buildings in England.

1074. Grants by English Heritage for acquisition of historic buildings in England.

The Historic Buildings and Monuments Commission for England ('English Heritage')¹ may make grants for the purpose of defraying in whole or in part any expenses incurred by a local authority or National Park authority² in England³ in the acquisition of property⁴ situated in England under its statutory powers⁵ to acquire listed buildings compulsorily or by agreement⁶.

The Commission may also make grants to the National Trust⁷ for the purposes of defraying, in whole or in part, any expenses incurred by it in the acquisition of:

- 423 (1) any building which is situated in England and which appears to the Commission to be of outstanding historic or architectural interest⁸;
- 424 (2) any land which is situated in England and which comprises, or is contiguous or adjacent to, any such building⁹; or
- 425 (3) any garden or other land which is situated in England and which appears to the Commission to be of outstanding historic interest but which is not contiguous or adjacent to a building which appears to the Commission to be of outstanding historic or architectural interest¹⁰.

1 As to the Historic Buildings and Monuments Commission for England see PARA 803.

2 In relation to any building or land in any National Park, the powers conferred on a local authority are exercisable by the National Park authority: see the Environment Act 1995 s 70, Sch 9 para 13(1), (2). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526.

3 As to the meaning of 'England' see PARA 804 note 2.

4 As to the meaning of 'property' see PARA 1069 note 6.

5 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARAS 1154, 1157) or s 52 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1161).

6 See the Historic Buildings and Ancient Monuments Act 1953 s 5B(1) (s 5B added by the National Heritage Act 1983 s 33, Sch 4 para 7; Historic Buildings and Ancient Monuments Act 1953 s 5B(1) amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 4(2)). In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of the Historic Buildings and Ancient Monuments Act 1953 Pt I (ss 1-9) special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(1), (2); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1171.

7 As to the National Trust see PARA 979.

8 Historic Buildings and Ancient Monuments Act 1953 s 5B(2)(a) (as added: see note 6).

9 Historic Buildings and Ancient Monuments Act 1953 s 5B(2)(b) (as added: see note 6).

10 Historic Buildings and Ancient Monuments Act 1953 s 5B(2)(c) (as added: see note 6).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(4) HISTORIC BUILDINGS/(iii) Acquisition of Historic Buildings etc/1075. Grants by the Welsh Ministers for acquisition of historic buildings in Wales.

1075. Grants by the Welsh Ministers for acquisition of historic buildings in Wales.

The Welsh Ministers¹ may make grants for the purpose of defraying, in whole or in part, any expenses incurred by a local authority or a National Park authority² in the acquisition of property³ situated in Wales under its statutory powers⁴ to acquire listed buildings compulsorily or by agreement⁵.

The Welsh Ministers may also makes grants to the National Trust⁶ for the purpose of defraying, in whole or in part, any expenses incurred by it in the acquisition of buildings in Wales which appear to the Welsh Ministers to be of outstanding historic or architectural interest⁷.

1 The functions of the Secretary of State under the Historic Buildings and Ancient Monuments Act 1953, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

2 In relation to any building in any National Park, the powers conferred on a local authority are exercisable by the National Park authority: see the Environment Act 1995 s 70, Sch 9 para 13(1), (2). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526.

3 As to the meaning of 'property' see PARA 1069 note 6.

4 Ie under the Town and Country Planning Act 1947 s 41 (repealed): see now the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARAS 1154, 1157) or s 52 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1161).

5 See the Historic Buildings and Ancient Monuments Act 1953 s 6(1), (4) (added by the National Heritage Act 1983 s 33, Sch 4); Interpretation Act 1978 s 17(2)(a). In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of the Historic Buildings and Ancient Monuments Act 1953 Pt I (ss 1-9) special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(1), (2); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1171. As to the preservation of the historic environment in Wales see further PARA 810.

6 As to the National Trust see PARA 979.

7 See the Historic Buildings and Ancient Monuments Act 1953 s 6(2), (4) (as added: see note 5).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(4) HISTORIC BUILDINGS/(iv) Endowments/1076. Powers of Secretary of State or the Welsh Ministers to accept endowments.

(iv) Endowments

1076. Powers of Secretary of State or the Welsh Ministers to accept endowments.

Where any instrument coming into operation after 31 July 1953¹ contains a provision purporting to be a gift² of property³ to the Secretary of State or, in relation to Wales, the Welsh Ministers⁴ upon trust to use the income of it, either for a limited time or in perpetuity, for or towards the upkeep of:

- 426 (1) a building acquired or accepted by the Secretary of State or the Welsh Ministers under their statutory powers⁵ or a building which the Secretary of State or the Welsh Ministers propose so to acquire or accept⁶; or
- 427 (2) a building which at the coming into operation of the trust instrument is or will shortly be vested in or under the control or management of the Secretary of State or the Welsh Ministers, being a building which appears to him or them to be one of outstanding historic or architectural interest⁷; or
- 428 (3) a building of which at that time the Secretary of State or the Welsh Ministers are or will shortly be guardian under the Ancient Monuments and Archaeological Areas Act 1979⁸,

or for or towards the upkeep of any such buildings together with other property, the Secretary of State or the Welsh Ministers may accept the gift and, if he or they do so, and the provision does not constitute a charitable trust, the following provisions have effect⁹.

The validity of the gift and of the trust to use the income as above (the 'endowment trust') is deemed not to be, or ever to have been, affected by any rule of law or equity which would not have affected their validity if the trust had been charitable¹⁰.

In relation to the property, of whatsoever nature, comprised in the gift and any property for the time being representing that property (the 'trust fund') the Secretary of State or the Welsh Ministers have, during the continuance of the endowment trust and without prejudice to any additional or larger powers conferred on the Secretary of State or on the Welsh Ministers by the trust instrument, the like powers of management, disposition and investment as, in the case of land subject to a trust of land¹¹, are conferred by law on the trustees of land in relation to the land and to the proceeds of its sale¹².

If, while the endowment trust continues, an event happens such that immediately thereafter the Secretary of State or the Welsh Ministers are neither entitled to any interest in the building to which the trust relates, nor have the building under his or their control or management, nor are guardian of the building under the Ancient Monuments and Archaeological Areas Act 1979, and the endowment trust would otherwise not then be determined or be deemed to have failed, then, on the happening of that event, the endowment trust ceases and the trust fund devolves accordingly as on a failure of the trust¹³.

If the trust instrument contains a provision whereby on the failure or determination of the endowment trust the trust fund purports to be given, or to be directed to be held, on charitable trusts, the validity of that gift or direction is deemed not to be, or ever to have been, affected by any rule of law or equity relating to perpetuities¹⁴.

- 1 Ie the date on which the Historic Buildings and Ancient Monuments Act 1953 was passed.
- 2 As to the meaning of 'gift' see PARA 1071 note 13.
- 3 As to the meaning of 'property' see PARA 1069 note 6.
- 4 The functions of the Secretary of State under the Historic Buildings and Ancient Monuments Act 1953, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.
- 5 Ie under the Historic Buildings and Ancient Monuments Act 1953 s 5: see PARA 1072.
- 6 Historic Buildings and Ancient Monuments Act 1953 s 8(1)(a).
- 7 Historic Buildings and Ancient Monuments Act 1953 s 8(1)(b).
- 8 Historic Buildings and Ancient Monuments Act 1953 s 8(1)(c) (amended by the Ancient Monuments and Archaeological Areas Act 1979 s 64(2), Sch 4 para 3). As to guardianship under the Ancient Monuments and Archaeological Areas Act 1979 see PARA 1028.
- 9 Historic Buildings and Ancient Monuments Act 1953 s 8(1). As to charitable trusts see **CHARITIES** vol 8 (2010) PARA 68 et seq. In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of the Historic Buildings and Ancient Monuments Act 1953 Pt I (ss 1-9) special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(1), (2); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1171.
- 10 Historic Buildings and Ancient Monuments Act 1953 s 8(2).
- 11 As to the meanings of 'trust of land' and 'trustees of land' see PARA 1028 note 2.
- 12 Historic Buildings and Ancient Monuments Act 1953 s 8(3) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 9). Where the Historic Buildings and Monuments Commission for England is requested in pursuance of the Historic Buildings and Ancient Monuments Act 1953 s 8(3) to manage any property the income from which is applicable for or towards the upkeep of property situated in England, the Commission may undertake the management: s 8(7) (added by the National Heritage Act 1983 s 33, Sch 4 para 9). As to the Historic Buildings and Monuments Commission for England see PARA 803.
- 13 Historic Buildings and Ancient Monuments Act 1953 s 8(4) (amended by the Ancient Monuments and Archaeological Areas Act 1979 Sch 4 para 3).
- 14 Historic Buildings and Ancient Monuments Act 1953 s 8(5). As to the rule against perpetuities see **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1008.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(4) HISTORIC BUILDINGS/(iv) Endowments/1077. Power of English Heritage to accept endowments.

1077. Power of English Heritage to accept endowments.

Where any instrument coming into operation after 1 October 1983¹ contains a provision purporting to be a gift² of property³ to the Historic Buildings and Monuments Commission for England ('English Heritage') upon trust to use the income of it, either for a limited time or in perpetuity, for or towards the upkeep of:

- 429 (1) a building acquired or accepted by the Commission⁴, or a building which the Commission proposes so to acquire or accept⁵; or
- 430 (2) a building which at the coming into operation of the trust instrument is or will shortly be vested in or under the management or in the custody of the Commission, being a building which is situated in England⁶ and which appears to the Commission to be one of outstanding historic or architectural interest⁷; or
- 431 (3) a building of which at that time the Commission is or will shortly be guardian under the Ancient Monuments and Archaeological Areas Act 1979⁸, or for or towards the upkeep of any such building together with other property situated in England⁹,

the Commission may accept the gift and, if it does so, and the provision does not constitute a charitable trust¹⁰, the following provisions have effect¹¹.

The validity of the gift and of the trust so to use the income (the 'endowment trust') is deemed not to be, or ever to have been, affected by any rule of law or equity which would not have affected their validity if the trust had been charitable¹².

In relation to the property, of whatsoever nature, comprised in the gift and any property for the time being representing that property (the 'trust fund') the Commission during the continuance of the endowment trust has, without prejudice to any additional or larger powers conferred on it by the trust instrument, the like powers of management, disposition and investment as, in the case of land subject to a trust of land¹³, are conferred by law on the trustees of land in relation to the land and to the proceeds of its sale¹⁴.

If, while the endowment trust continues, an event happens such that immediately thereafter the Commission is neither entitled to any interest in the building to which the trust relates, nor has the building under its management or in its custody, nor is guardian of the building under the Ancient Monuments and Archaeological Areas Act 1979, and the endowment trust would otherwise not then be determined or be deemed to have failed, then, on the happening of that event, the endowment trust ceases and the trust fund devolves accordingly as on a failure of the trust¹⁵.

If the trust instrument contains a provision whereby on the failure or determination of the endowment trust the trust fund purports to be given, or to be directed to be held, on charitable trusts, the validity of that gift or direction is deemed not to be, or ever to have been, affected by any rule of law or equity relating to perpetuities¹⁶.

1 Ie the date of the establishment of the Historic Buildings and Monuments Commission for England ('English Heritage'): see the National Heritage Act 1983 s 32; National Heritage Act 1983 (Commencement No 3) Order 1983, SI 1983/1437, art 2(a). As to the Historic Buildings and Monuments Commission for England see PARA 803.

2 As to the meaning of 'gift' see PARA 1071 note 13.

- 3 As to the meaning of 'property' see PARA 1069 note 6.
- 4 Ie under the Historic Buildings and Ancient Monuments Act 1953 s 5A: see PARA 1073.
- 5 Historic Buildings and Ancient Monuments Act 1953 s 8A(1)(a) (s 8A added by the National Heritage Act 1983 s 33, Sch 4 para 10).
- 6 As to the meaning of 'England' see PARA 804 note 2.
- 7 Historic Buildings and Ancient Monuments Act 1953 s 8A(1)(b) (as added: see note 5).
- 8 As to guardianship under the Ancient Monuments and Archaeological Areas Act 1979 see PARA 1028.
- 9 Historic Buildings and Ancient Monuments Act 1953 s 8A(1)(c) (as added: see note 5).
- 10 As to charitable trusts see **CHARITIES** vol 8 (2010) PARA 68 et seq.
- 11 Historic Buildings and Ancient Monuments Act 1953 s 8A(1) (as added: see note 5). In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of the Historic Buildings and Ancient Monuments Act 1953 Pt I (ss 1-9) special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(1), (2); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1171.
- 12 Historic Buildings and Ancient Monuments Act 1953 s 8A(2) (as added: see note 5).
- 13 As to the meanings of 'trust of land' and 'trustees of land' see PARA 1028 note 2.
- 14 See the Historic Buildings and Ancient Monuments Act 1953 s 8A(3) (as added (see note 5); amended by the Trusts of Land and Appointment of Trustees Act 1996, s 25(1), Sch 3, para 9).
- 15 Historic Buildings and Ancient Monuments Act 1953 s 8A(4) (as added: see note 5).
- 16 Historic Buildings and Ancient Monuments Act 1953 s 8A(5) (as added: see note 5). As to the rule against perpetuities see **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1008.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(4) HISTORIC BUILDINGS/(v) Listed Buildings/1078. Listed buildings.

(v) Listed Buildings

1078. Listed buildings.

The Planning (Listed Buildings and Conservation Areas) Act 1990 provides for the compilation of lists of buildings of special architectural or historic interest¹ and institutes a regime for the control of works affecting listed buildings² and for the enforcement of the statutory provisions³. Provision is also made for the prevention of damage or deterioration to listed buildings⁴. The Act is covered in detail elsewhere in this work⁵.

The protection of the historic environment, including listed buildings, is a key aspect of the wider environmental responsibilities to be taken account of in the planning process, and must be taken fully into account both in the formulation of local planning authorities' planning policies and in development control⁶.

1 See the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch I (ss 1-6).

2 See the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch II (ss 7-27).

3 See the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch IV (ss 38-46).

4 See the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch V (ss 47-59).

5 See **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1072 et seq.

6 See *Planning Policy Guidance Note 15: Planning and the Historic Environment (PPG15)* para 2.1. PPG 15 provides a full statement of government policies for the identification and protection of historic buildings, conservation areas and other elements of the historic environment, and explains the role played by the planning system in their protection. See also *Communities and Local Government Circular 01/2007 'Revisions to Principles of Selection for Listing Buildings'*. Copies of PPG 15 and the circular are available on the Department for Communities and Local Government website at www.communities.gov.uk. As to planning policy guidance see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 9.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(5) CONSERVATION AREAS/1079. Conservation areas.

(5) CONSERVATION AREAS

1079. Conservation areas.

The Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on local planning authorities to designate as conservation areas those parts of their area which they determine are of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance¹. Local planning authorities must formulate and publish proposals for the preservation and enhancement of their conservation areas², and various powers are given to them for the control of demolition in conservation areas³ and the making of grants and loans for their preservation or enhancement⁴. The Act is covered in detail elsewhere in this work⁵.

The protection of the historic environment, including conservation areas, is a key aspect of the wider environmental responsibilities to be taken account of in the planning process, and must be taken fully into account both in the formulation of local planning authorities' planning policies and in development control⁶.

1 See the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 69-70.

2 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 71.

3 See the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 74-76.

4 See the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 77-80.

5 See **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1169 et seq.

6 See *Planning Policy Guidance Note 15: Planning and the Historic Environment (PPG15)* para 2.1. PPG 15 provides a full statement of government policies for the identification and protection of historic buildings, conservation areas and other elements of the historic environment, and explains the role played by the planning system in their protection. See also *Communities and Local Government Circular 01/2007 'Revisions to Principles of Selection for Listing Buildings'*. Copies of PPG 15 and the circular are available on the Department for Communities and Local Government website at www.communities.gov.uk. As to planning policy guidance see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 9.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(6) HISTORIC GARDENS/1080. Endowment of gardens in England.

(6) HISTORIC GARDENS

1080. Endowment of gardens in England.

Where any instrument coming into operation after 1 October 1983¹ contains a provision purporting to be a gift² of property³ to the Historic Buildings and Monuments Commission for England upon trust to use the income of it, either for a limited time or in perpetuity, for or towards the upkeep of a garden or other land acquired or accepted by the Commission under its statutory power⁴, or a garden or other land which the Commission proposes so to acquire or accept, or for or towards the upkeep of any such garden or other land together with other property situated in England⁵, the Commission may accept the gift and, if it does so, and the provision does not constitute a charitable trust⁶, the following provisions have effect⁷.

The validity of the gift and of the trust so to use the income (the 'endowment trust') is deemed not to be, or ever to have been, affected by any rule of law or equity which would not have affected their validity if the trust had been charitable⁸.

In relation to the property, of whatsoever nature, comprised in the gift and any property for the time being representing that property (the 'trust fund') the Commission during the continuance of the endowment trust has, without prejudice to any additional or larger powers conferred on it by the trust instrument, the like powers of management, disposition and investment as, in the case of land subject to a trust of land⁹, are conferred by law on the trustees of land in relation to the land and to the proceeds of its sale¹⁰.

If, while the endowment trust continues, an event happens such that immediately thereafter the Commission is not entitled to any interest in the garden or other land to which the trust relates, and the endowment trust would not otherwise then be determined or be deemed to have failed, then, on the happening of that event, the endowment trust ceases and the trust fund devolves accordingly as on a failure of the trust¹¹.

If the trust instrument contains a provision whereby on the failure or determination of the endowment trust the trust fund purports to be given, or to be directed to be held, on charitable trusts, the validity of that gift or direction is deemed not to be, or ever to have been, affected by any rule of law or equity relating to perpetuities¹².

1 Ie the date of the establishment of the Historic Buildings and Monuments Commission for England: see the National Heritage Act 1983 s 32; National Heritage Act 1983 (Commencement No 3) Order 1983, SI 1983/1437, art 2(a). As to the Historic Buildings and Monuments Commission for England see PARA 803.

2 As to the meaning of 'gift' see PARA 1071 note 13.

3 As to the meaning of 'property' see PARA 1069 note 6.

4 Ie under the Historic Buildings and Ancient Monuments Act 1953 s 5A(1)(d): see PARA 1073.

5 As to the meaning of 'England' see PARA 804 note 2.

6 As to charitable trusts see **CHARITIES** vol 8 (2010) PARA 68 et seq.

7 Historic Buildings and Ancient Monuments Act 1953 s 8B(1) (s 8B added by the National Heritage Act 1983 s 33, Sch 4 para 10). In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of the Historic Buildings and Ancient Monuments Act 1953 Pt I (ss 1-9) special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area:

see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(1), (2); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1171.

8 Historic Buildings and Ancient Monuments Act 1953 s 8B(2) (as added: see note 7).

9 As to the meanings of 'trust of land' and 'trustees of land' see PARA 1028 note 2.

10 Historic Buildings and Ancient Monuments Act 1953 s 8B(3) (as added (see note 7); amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3, para 9).

11 Historic Buildings and Ancient Monuments Act 1953 s 8B(4) (as added: see note 7).

12 Historic Buildings and Ancient Monuments Act 1953 s 8B(5) (as added: see note 7). As to the rule against perpetuities see **PERPETUITIES AND ACCUMULATIONS** vol 35 (Reissue) PARA 1008.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(6) HISTORIC GARDENS/1081. Register of gardens in England.

1081. Register of gardens in England.

Where the Historic Buildings and Monuments Commission for England¹ compiles a register of gardens and other land situated in England² and appearing to the Commission to be of special historic interest³, it must, as soon as practicable after including in the register an entry relating to any garden or land, notify the following persons⁴ of the inclusion and send to them a copy of the entry⁵:

- 432 (1) the owner and, if the owner is not the occupier, the occupier of the garden or land⁶;
- 433 (2) any county planning authority⁷, and any district planning authority, in whose area the garden or land, or any part of the garden or land, is situated⁸; and
- 434 (3) the Secretary of State⁹.

The protection of the historic environment, including parks and gardens, is a key aspect of the wider environmental responsibilities to be taken account of in the planning process, and must be taken fully into account both in the formulation of local planning authorities' planning policies and in development control¹⁰.

1 As to the Historic Buildings and Monuments Commission for England see PARA 803.

2 As to the meaning of 'England' see PARA 804 note 2.

3 Historic Buildings and Ancient Monuments Act 1953 s 8C(1) (s 8C added by the National Heritage Act 1983 s 33, Sch 4 para 10). In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of the Historic Buildings and Ancient Monuments Act 1953 Pt I (ss 1-9) special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(1), (2); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1171. As to a register of gardens in Wales see PARA 1082.

4 As to the meaning of 'person' see PARA 803 note 16.

5 Historic Buildings and Ancient Monuments Act 1953 s 8C(2) (as added: see note 3).

6 Historic Buildings and Ancient Monuments Act 1953 s 8C(3)(a) (as added: see note 3).

7 As to planning authorities see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28.

8 Historic Buildings and Ancient Monuments Act 1953 s 8C(3)(b) (as added: see note 3).

9 Historic Buildings and Ancient Monuments Act 1953 s 8C(3)(c) (as added: see note 3). As to the Secretary of State see PARA 802.

10 See *Planning Policy Guidance Note 15: Planning and the Historic Environment (PPG15)* para 2.1. PPG 15 provides a full statement of government policies for the identification and protection of historic buildings, conservation areas and other elements of the historic environment, and explains the role played by the planning system in their protection. See also *Communities and Local Government Circular 01/2007 'Revisions to Principles of Selection for Listing Buildings'*. Copies of PPG 15 and the circular are available on the Department for Communities and Local Government website at www.communities.gov.uk. As to planning policy guidance see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 9.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(6) HISTORIC GARDENS/1082. Non-statutory register of gardens etc in Wales.

1082. Non-statutory register of gardens etc in Wales.

A non-statutory register of landscapes, parks and gardens of special historic interest in Wales has been prepared by Cadw¹. The register includes parks and gardens thought to be of national importance and has been compiled in order to aid the informed conservation of historic parks and gardens by owners, local planning authorities, developers, statutory bodies and all concerned with them².

Planning policy issued by the Welsh Assembly Government indicates that local planning authorities are to take the register into account in preparing their development policies³.

1 As to Cadw see PARA 810.

2 See the Cadw website at www.cadw.wales.gov.uk.

3 See *Planning Policy Wales* (March 2002). A copy of this document is available on the Welsh Assembly Government website at www.new.wales.gov.uk. As to the Welsh Assembly Government see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to local development policies see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 89 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/3. IMMOVEABLE CULTURAL HERITAGE/(7) HISTORIC BATTLEFIELDS/1083. Register of Historic Battlefields.

(7) HISTORIC BATTLEFIELDS

1083. Register of Historic Battlefields.

The Register of Historic Battlefields was established by English Heritage¹ to encourage local authorities, owners and others to understand the importance of these sites. Designation on the register introduces no additional statutory controls, but one of its primary objectives is to encourage policies and other mechanisms that ensure that change and development affecting battlefields is sensitive and appropriate. Another aim is to support initiatives that use improved access, interpretation and education to give a better understanding of battlefields².

The protection of the historic environment, including battlefields, is a key aspect of the wider environmental responsibilities to be taken account of in the planning process, and must be taken fully into account both in the formulation of local planning authorities' planning policies and in development control³.

1 See the Historic Buildings and Monuments Commission for England: see PARA 803.

2 See the English Heritage website at www.english-heritage.org.uk

3 See *Planning Policy Guidance Note 15: Planning and the Historic Environment (PPG15)* para 2.1. PPG 15 provides a full statement of government policies for the identification and protection of historic buildings, conservation areas and other elements of the historic environment, and explains the role played by the planning system in their protection. See also *Communities and Local Government Circular 01/2007 'Revisions to Principles of Selection for Listing Buildings'*. Copies of PPG 15 and the circular are available on the Department for Communities and Local Government website at www.communities.gov.uk. As to planning policy guidance see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 9.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(1) TREASURE/1084. In general.

4. MOVEABLE CULTURAL HERITAGE

(1) TREASURE

1084. In general.

The common law doctrine of treasure trove, which provided that any gold or silver in coin, plate or bullion found deliberately concealed in a house, or in the earth or other private place, with the intention of recovery, the owner thereof being unknown, belonged to Her Majesty or a grantee having the franchise of treasure trove¹, has been replaced by a new regime under the Treasure Act 1996².

Any treasure³ found on and after 24 September 1997⁴, whatever the nature of the place where the treasure was found⁵ and whatever the circumstances in which it was left, including being lost or being left with no intention of recovery⁶, vests, subject to prior interests⁷ and rights, in the franchisee⁸, if there is one⁹, or otherwise in the Crown¹⁰. Treasure so vesting in the Crown is to be treated¹¹ as part of the hereditary revenues of the Crown¹². Any such treasure may be transferred, or otherwise disposed of, in accordance with directions given by the Secretary of State¹³; and the Crown's title to any such treasure may be disclaimed at any time by the Secretary of State¹⁴.

At the date at which this volume states the law, the coroner retains jurisdiction to hold inquests into treasure¹⁵. As from a day to be appointed¹⁶, jurisdiction to conduct investigations concerning items of treasure and to hold inquests in respect thereof is vested in the Coroner for Treasure¹⁷.

If treasure has vested in the Crown¹⁸ and is to be transferred to a museum¹⁹, the Secretary of State must determine whether a reward is to be paid by the museum before the transfer²⁰. If he determines that a reward is to be paid, he must also determine, in whatever way he thinks fit, the treasure's market value²¹, the amount of the reward²², to whom the reward is to be payable²³ and, if it is to be payable to more than one person, how much each is to receive²⁴.

Cases of treasure and potential treasure should be dealt with as expeditiously as possible²⁵.

1 See Chitty's Law of the Prerogatives of the Crown 152, cited with approval in *A-G v Moore* [1893] 1 Ch 676 at 683 per Stirling J and in *A-G v Trustees of British Museum* [1903] 2 Ch 598 at 608 per Farwell J; 3 Co Inst 132; *A-G of the Duchy of Lancaster v GE Overton (Farms) Ltd* [1982] Ch 277, [1982] 1 All ER 524, CA.

2 For the purposes of the Coroners and Justice Act 2009, 'treasure trove' does not include anything found on or after 24 September 1997: s 48(1). See also note 4.

3 As to the meaning of 'treasure' see PARA 1086. As to treasure generally see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 373.

4 24 September 1997 is the date on which the Treasure Act 1996, other than s 11, came into force: see the Treasure Act 1996 (Commencement No 2) Order 1997, SI 1997/1977, art 2. The Treasure Act 1996 s 11 (see PARA 1085) came into force on 13 March 1997: see the Treasure Act 1996 (Commencement No 1) Order 1997, SI 1997/760, art 2.

5 See the Treasure Act 1996 s 4(4)(a).

6 See the Treasure Act 1996 s 4(4)(b).

7 Prior interests and rights are any which, or which derive from any which, were held when the treasure was left where it was found (Treasure Act 1996 s 4(2)(a)) or, if the treasure had been moved before being found, were held when it was left where it was before being moved: (s 4(2)(b)).

8 The 'franchisee' for any treasure is the person who was, immediately before 24 September 1997, or apart from the Treasure Act 1996, as successor in title, would have been, the franchisee of the Crown in right of treasure trove for the place where the treasure was found: s 5(1). It is as franchisees in right of treasure trove that Her Majesty and the Duke of Cornwall are to be treated as having enjoyed the rights to treasure trove which belonged respectively to the Duchy of Lancaster and the Duchy of Cornwall immediately before 24 September 1997: s 5(2). As to franchisees see the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* Pt D (paras 19-22). As to the Code of Practice generally and its status see PARA 1085. As to the meaning of 'person' see PARA 803 note 16. As to the Duchy of Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 318 et seq. As to the Duchy of Lancaster see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 300 et seq.

9 Treasure Act 1996 s 4(1)(a). If the treasure would have been treasure trove if found before 24 September 1997, neither the Crown nor any franchisee has any interest in it or right over it except in accordance with the Treasure Act 1996: s 4(3).

10 Treasure Act 1996 s 4(1)(b). See also note 9.

11 In accordance with the Civil List Act 1952 s 1 (surrender of hereditary revenues to the Exchequer): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 707; **CROWN PROPERTY** vol 12(1) (Reissue) PARA 207.

12 Treasure Act 1996 s 6(1).

13 Treasure Act 1996 s 6(2). As to the Secretary of State see PARA 802.

14 Treasure Act 1996 s 6(3). If the Crown's title is disclaimed, the treasure is deemed not to have vested in the Crown under the Treasure Act 1996 (s 6(4)(a)) and, without prejudice to the interests or rights of others, may be delivered to any person in accordance with the Code of Practice published under s 11 (see PARA 1085) (s 6(4)(b)). As to the Secretary of State's power to disclaim objects see further the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* Pt F (paras 48-52). As to disclaimer see also the Coroners and Justice Act 2009 s 29; and PARA 1088.

15 See PARAS 1087-1089.

16 The Coroners and Justice Act 2009 ss 25-29, Sch 4, come into force on a day or days to be appointed: see s 182(4)(a), (5). At the date at which this volume states the law no such day or days had been appointed.

17 See the Coroners and Justice Act 2009 ss 26-29; and PARA 1088. The Lord Chancellor may appoint a person as the Coroner for Treasure: s 25, Sch 4 para 1. As to qualification for such appointment and the terms thereof see Sch 4 paras 2-6. The Chief Coroner may designate one or more assistant coroners to act as Assistant Coroners for Treasure (see Sch 4 paras 7-10) who may perform any functions of the Coroner for Treasure during a period when the Coroner for Treasure is absent or unavailable, during a vacancy in the office of Coroner for Treasure, or at any other time with the consent of the Coroner for Treasure (Sch 4 para 11(1)). Accordingly a reference to the Coroner for Treasure is to be read, where appropriate, as including an Assistant Coroner for Treasure: Sch 4 para 11(2). The Lord Chancellor may appoint staff to assist the Coroner for Treasure and any Assistant Coroners for Treasure in the performance of their functions: see Sch 4 para 12. The Chief Coroner may, with the agreement of the Lord Chancellor, make regulations about the training of the Coroner for Treasure and Assistant Coroners for Treasure: see s 37; and **CORONERS**. The Coroner for Treasure is disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt III (amended by the Coroners and Justice Act 2009 Sch 21 para 26); and **PARLIAMENT** vol 78 (2010) PARA 908. As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq. As to the Chief Coroner and the regulation of coroners generally see **CORONERS**.

18 Treasure Act 1996 s 10(1)(a). The vesting referred to is that under s 4: see the text to notes 3-10.

19 Treasure Act 1996 s 10(1)(b).

20 Treasure Act 1996 s 10(2).

21 Treasure Act 1996 s 10(3)(a).

22 Treasure Act 1996 s 10(3)(b).

23 Treasure Act 1996 s 10(3)(c).

24 Treasure Act 1996 s 10(3)(d). The total reward must not exceed the treasure's market value: s 10(4). The reward may be payable to (1) the finder or any other person involved in the find (s 10(5)(a)); (2) the occupier of the land at the time of the find (s 10(5)(b)); or (3) any person who had an interest in the land at that time or has had such an interest at any time since then (s 10(5)(c)); or (4) as from a day to be appointed, any person who gave notice under s 8A (see PARA 1087) in respect of the treasure (s 10(5)(d) (prospectively added by the Coroners and Justice Act 2009 s 30(2))). At the date at which this volume states the law no such day had been appointed. As to valuation of treasure see the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* Pt I (paras 65-70); and as to rewards see Pt H (paras 71-85).

25 See the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* Pt L (paras 87-88).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(1) TREASURE/1085. Code of practice.

1085. Code of practice.

The Secretary of State¹ must prepare a code of practice relating to treasure², keep the code under review³, and revise it when appropriate⁴. If the Secretary of State considers that different provision should be made for England and Wales and Northern Ireland, or that different provision should otherwise be made for treasure found in different areas, he may prepare two or more separate codes⁵.

The code must in particular set out the principles and practice to be followed by the Secretary of State when considering to whom treasure should be offered⁶, when making a determination as to the payment of rewards⁷, and where the Crown's title to treasure is disclaimed⁸. The code may include guidance for those who search for or find treasure⁹, and for museums and others who exercise functions in relation to treasure¹⁰. Before preparing the code or revising it, the Secretary of State must consult such persons¹¹ appearing to him to be interested as he thinks appropriate¹². A copy of the code and of any proposed revision of the code must be laid before Parliament¹³; and neither the code nor any revision comes into force until approved by a resolution of each House of Parliament¹⁴.

The Secretary of State must publish the code in whatever way he considers appropriate for bringing it to the attention of those interested¹⁵. The code is intended to provide guidance for all those concerned with treasure¹⁶.

As from a day to be appointed the following provisions also have effect¹⁷. The code of practice may make provision to do with objects in respect of which notice of disclaimer¹⁸ is given¹⁹. No civil liability on the part of the Coroner for Treasure²⁰ arises where he or she delivers an object, or takes any other action, in accordance with the code of practice²¹.

1 As to the Secretary of State see PARA 802.

2 Treasure Act 1996 s 11(1)(a). As to the meaning of 'treasure' see PARA 1086.

3 Treasure Act 1996 s 11(1)(b).

4 Treasure Act 1996 s 11(1)(c). In pursuance of this requirement the Secretary of State prepared and published the Treasure Act 1996: Code of Practice (England and Wales) in July 1997. This was revised in 2002 and 2007 and is now known as the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)*. Further reviews of the code may take place, at the discretion of the Secretary of State, five years after the publication of the revised code of practice: see the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* para 89.

The code contains the following parts and appendices: (A) Summary (paras 1-3); (B) Commencement of the Act and Treasure (Designation) Order 2002 (para 4); (C) Definition of treasure (paras 5-18); (D) The ownership of treasure; franchisees (paras 19-22); (E) Guidance for finders and others concerned with treasure (paras 23-47); (F) Secretary of State's power to disclaim objects (paras 48-52); (G) Procedure when a find has been reported to the coroner; treasure inquests (paras 53-62); (H) Acquisition of treasure (paras 63-64); (I) Valuation of treasure (paras 65-70); (J) Rewards (paras 71-85); (K) Annual Report (para 86); (L) Speed of handling cases (paras 87-88); (M) Codes of Practice (para 89); Appendix 1: The Treasure Act 1996; The Treasure (Designation) Order 2002; Appendix 2: Sources of further advice; Appendix 3: Coins commonly found in England and Wales that contain less than 10% of gold or silver; Appendix 4: The care of finds; Appendix 5: Treasure Receipt Form; Appendix 6: National Council for Metal Detecting Code of Conduct; Appendix 7: Treasure Act Flow Chart.

5 See the Treasure Act 1996 s 11(8). As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4. A separate code of practice has been prepared for Northern Ireland.

6 Treasure Act 1996 s 11(2)(a).

- 7 Treasure Act 1996 s 11(2)(b). Such a determination is one made under s 10: see PARA 1084.
- 8 Treasure Act 1996 s 11(2)(c). As to disclaimer of the Crown's title see PARA 1084.
- 9 Treasure Act 1996 s 11(3)(a).
- 10 Treasure Act 1996 s 11(3)(b).
- 11 As to the meaning of 'person' see PARA 803 note 16.
- 12 Treasure Act 1996 s 11(4).
- 13 Treasure Act 1996 s 11(5). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.
- 14 Treasure Act 1996 s 11(6).
- 15 Treasure Act 1996 s 11(7). A copy of the code is available on the Department for Culture, Media and Sport website at www.culture.gov.uk.
- 16 See the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* Introduction. However, questions of whether or not any object constitutes treasure and how a coroner should conduct an inquiry into treasure are for the coroner to decide on the facts and circumstances of each case; and nothing in the code obviates the need for a finder to give independent consideration as to whether something he has found might constitute treasure: see the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* Introduction. As to the jurisdiction of coroners see PARA 1088.
- 17 The Coroners and Justice Act 2009 s 31 comes into force on a day to be appointed: see s 182(4)(a). At the date at which this volume states the law no such day had been appointed.
- 18 In notice under the Coroners and Justice Act 2009 s 29(1) or (2): see PARA 1088.
- 19 See the Coroners and Justice Act 2009 s 31(1).
- 20 As to the Coroner for Treasure see PARA 1084 note 17.
- 21 See the Coroners and Justice Act 2009 s 31(2).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(1) TREASURE/1086. Meaning of 'treasure'.

1086. Meaning of 'treasure'.

'Treasure' is¹:

435 (1) any object at least 300 years old² when found which:

21

- 31. (a) is not a coin³ but has metallic content of which at least 10 per cent by weight⁴ is precious metal⁵;
- 32. (b) when found, is one of at least two coins in the same find⁶ which are at least 300 years old at that time and have that percentage of precious metal⁷; or
- 33. (c) when found, is one of at least ten coins in the same find which are at least 300 years old at that time⁸;

22

436 (2) any object at least 200 years old when found which belongs to a designated class⁹;

437 (3) any object which would have been treasure trove if found before 24 September 1997¹⁰;

438 (4) any object which, when found, is part of the same find as:

23

- 34. (a) an object within head (1), (2) or (3) above found at the same time or earlier¹¹; or
- 35. (b) an object found earlier which would be within head (1) or (2) above if it had been found at the same time¹².

24

Treasure does not include objects which: (i) are unworked natural objects¹³; or (ii) are minerals as extracted from a natural deposit¹⁴; or (iii) belong to a designated class¹⁵. Nor is an object treasure if it is wreck¹⁶.

For the purposes of the Coroners and Justice Act 2009, 'treasure' means anything that is treasure for the purposes of the above definition (and accordingly does not include anything found before 24 September 1997)¹⁷.

1 As to the meaning of 'treasure' see further the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* Pt C (paras 5-18). See also Pt H (paras 63-64) as to the acquisition of treasure. As to the code of practice see PARA 1085.

2 An object which can reasonably be taken to be at least a particular age is to be presumed to have been at least that age, unless shown not to be: Treasure Act 1996 s 3(1), (6).

3 'Coin' includes any metal token which was, or can reasonably be assumed to have been, used or intended for use as or instead of money: Treasure Act 1996 s 3(1), (2).

4 The figure of 10% was not chosen arbitrarily but was chosen because, if an alloy has more than 10% gold or silver, the gold or silver's presence is not accidental; where objects have a lesser precious metal content, it is possible that the gold or silver was not deliberately added to the alloy. The requirement of 10% also excludes from the operation of the Treasure Act 1996 objects which are plated with gold or silver: see HC Official Report SC F (Treasure Bill), 17 April 1996, cols 10, 11. As to the coins commonly found in England and Wales which contain less than 10% of gold or silver see the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* Appendix 3.

5 Treasure Act 1996 s 1(1)(a)(i). 'Precious metal' means gold or silver: s 3(1), (3).

6 When an object is found, it is part of the same find as another object if: (1) they are found together; (2) the other object was found earlier in the same place where they had been left together; (3) the other object was found earlier in a different place, but they had been left together and had become separated before being found: Treasure Act 1996 s 3(1), (4). If the circumstances in which objects are found can reasonably be taken to indicate that they were together at some time before being found, the objects are to be presumed to have been left together, unless shown not to have been: s 3(1), (5).

7 Treasure Act 1996 s 1(1)(a)(ii).

8 Treasure Act 1996 s 1(1)(a)(iii).

9 Treasure Act 1996 s 1(1)(b). A designated class is one designated under s 2(1): see s 1(1)(b). The Secretary of State may by order, for this purpose, designate any class of object which he considers to be of outstanding historical, archaeological or cultural importance: s 2(1). Any order under s 2 must be made by statutory instrument (s 2(3)); but such no order is to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House (s 2(4)). As to the Secretary of State see PARA 802. As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941. The following classes of objects are designated pursuant to s 2(1): (1) any object, other than a coin, any part of which is base metal, which, when found is one of at least two base metal objects in the same find which are of prehistoric date (Treasure (Designation) Order 2002, SI 2002/2666, art 3(a)); (2) any object, other than a coin, which is of prehistoric date, and any part of which is gold or silver (art 3(b)). 'Base metal' means any metal other than gold or silver; and 'of prehistoric date' means dating from the Iron Age or any earlier period: art 2.

The Treasure Act 1996 s 2 supplements s 1, which sets out the categories of object which can qualify as treasure for the purposes of the Treasure Act 1996, empowering the Secretary of State by order to designate additional classes of object as treasure, and to remove classes of object from the definition of treasure. Section 2 is intended to introduce an element of flexibility in the new regime relating to finds of treasure. The definition of treasure contained in s 1 operates to exclude objects such as hoards of Bronze Age tools, weapons etc, not because such objects are not of archaeological importance, but because of the difficulty of drafting a definition of treasure which would include them but would exclude everyday finds such as iron nails, pottery shards and buttons which are of limited archaeological interest. Accordingly s 2 allows adjustments to be made to the definition following a review of the operation of the new system, without having to introduce primary legislation: see HC Official Report SC F (Treasure Bill), 17 April 1996, cols 14, 15.

10 Treasure Act 1996 s 1(1)(c). 24 September 1997 was the date on which the Treasure Act 1996 s 4 (ownership of treasure which is found: see PARA 1084) came into force: see s 1(1)(c); the Treasure Act 1996 (Commencement No 2) Order 1997, SI 1997/1977, art 2. As to the common law doctrine of treasure trove see PARA 1084.

11 Treasure Act 1996 s 1(1)(d)(i).

12 Treasure Act 1996 s 1(1)(d)(ii).

13 Treasure Act 1996 s 1(2)(a).

14 Treasure Act 1996 s 1(2)(b).

15 Treasure Act 1996 s 1(2). A designated class is one designated under s 2(2): see s 1(2). The Secretary of State may by order, for this purpose, designate any class of object which, apart from the order, would be treasure: s 2(2). As to the making of such orders see note 9. At the date at which this volume states the law, no such order had been made. The Government has, however, given a commitment to the Church of England that it will bring forward an order under s 2 exempting objects found in association with human burials in a consecrated place and objects (except for treasure trove) covered by the Church of England's own legal systems of controls: see the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* para 18. As to the Church of England see **ECCLESIASTICAL LAW** vol 14 PARA 345 et seq.

16 Treasure Act 1996 s 3(1), (7). 'Wreck' includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water: see the Merchant Shipping Act 1995 Pt IX s 255(1) (definition applied by the Treasure Act 1996 s 3(1), (7)); and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 987. As to objects found on the foreshore see the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* para 17.

17 See the Coroners and Justice Act 2009 s 48(1). 24 September 1997 is the day on which the Treasure Act 1996 came into force: see PARA 1084 note 4.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(1) TREASURE/1087. Duty of finder to notify coroner.

1087. Duty of finder to notify coroner.

A person¹ who finds an object which he believes or has reasonable grounds for believing is treasure² must notify the coroner for the district³ in which the object was found before the end of the notice period⁴, that period being 14 days beginning with the day after the find⁵ or, if later, the day on which the finder first believes or has reason to believe the object is treasure⁶. Any person who fails to comply with this provision is guilty of an offence⁷. In proceedings for such an offence it is a defence for the accused to show that he had, and has continued to have, a reasonable excuse⁸ for failing to notify the coroner⁹.

As from a day to be appointed the following provisions have effect¹⁰.

A person who acquires property in an object¹¹, and believes or has reasonable grounds for believing that the object is treasure¹² and that notification¹³ in respect of the object has not been given¹⁴, must notify the Coroner for Treasure¹⁵ before the end of the notice period¹⁶. Any person who fails to comply with this provision is guilty of an offence if notification¹⁷ in respect of the object has not been given¹⁸, and there has been no investigation¹⁹ in relation to the object²⁰. In proceedings for such an offence, it is a defence for the defendant to show that he had, and has continued to have, a reasonable excuse for failing to notify the Coroner for Treasure²¹.

Proceedings for an offence under the provisions set out above²² may be brought within the period of six months²³ from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge; but no such proceedings may be brought by virtue of this provision more than three years after the commission of the offence²⁴.

1 As to the meaning of 'person' see PARA 803 note 16.

2 As to the meaning of 'treasure' see PARA 1086.

3 As from a day to be appointed, the notification must be given to the Coroner for Treasure instead of to the coroner for the district in which the object was found: see the Treasure Act 1996 s 8(1) (prospectively amended by the Coroners and Justice Act 2009 Sch 21 paras 37, 39(1), (2)). At the date at which this volume states the law no such day had been appointed.

If the office of coroner for a district is vacant, the person acting as coroner for that district is the coroner for these purposes: Treasure Act 1996 s 8(5). As from a day to be appointed there is substituted for s 8(5) the following: If the office of Coroner for Treasure is vacant, notification under s 8(1) must be given to an Assistant Coroner for Treasure: s 8(5) (prospectively substituted by the Coroners and Justice Act 2009 Sch 21 paras 37, 39(1), (4)). At the date at which this volume states the law no such day had been appointed. As to the Coroner for Treasure and Assistant Coroners for Treasure see PARA 1084 note 17.

4 Treasure Act 1996 s 8(1). As from a day to be appointed s 8 has effect subject to s 8B: s 8(6) (prospectively added by the Coroners and Justice Act 2009 Sch 21 paras 37, 39(1), (4)). A requirement under the Treasure Act 1996 s 8 or 8A (see the text to notes 10-21) to give a notification to the Coroner for Treasure (or an Assistant Coroner for Treasure) may, if the relevant place falls within an area for which there is a designated officer, be complied with by giving the notification to that officer: s 8B(1) (s 8B prospectively added by the Coroners and Justice Act 2009 Sch 21 paras 37, 40). A designated officer must notify the Coroner for Treasure of all such notifications (see the Treasure Act 1996 s 8B(2) (as so prospectively added)), or if the office of Coroner for Treasure is vacant, notify an Assistant Coroner for Treasure (see s 8B(3) (as so prospectively added)). 'Designated officer' means an officer designated by an order made by statutory instrument by the Secretary of State: s 8B(4) (as so prospectively added). A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament: s 8B(5) (as so prospectively added). 'Relevant place' means (1) in relation to a requirement under s 8, the place where the object in question was found; (2) in relation to a requirement under s 8A, the place where the treasure in question is

located: s 8B(4) (as so prospectively added). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 802 note 2.

5 Treasure Act 1996 s 8(2)(a).

6 Treasure Act 1996 s 8(2)(b). For guidance for finders and others concerned with treasure see the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* Pt E (paras 23-47). As to the code of practice see PARA 1085. The common law offence of concealment of treasure trove (see eg *R v Toole* (1867) 11 Cox CC 75; *R v Thomas and Willett* (1863) 12 WR 108) was abolished by the Theft Act 1968 s 32(1)(a).

7 See the Treasure Act 1996 s 8(3). A person guilty of such an offence is liable on summary conviction to (1) imprisonment for a term not exceeding three months (s 8(3)(a)); or (2) to a fine not exceeding level 5 on the standard scale (s 8(3)(b)); or (3) to both (s 8(3)(c)). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As from a day to be appointed, the term of imprisonment under head (1) above is one not exceeding 51 weeks: s 8(3)(a) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 48). At the date at which this volume states the law, no such day had been appointed.

8 For example, in considering a case, the court may take into account whether the finder could have been expected to know that his find was treasure: see 277 HC Official Report (6th series) cols 579, 587-588. As to the standard of proof on the accused see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1370-1371.

9 Treasure Act 1996 s 8(4). As from a day to be appointed there is substituted for the word 'coroner' the words 'Coroner for Treasure': s 8(4) (prospectively amended by the Coroners and Justice Act 2009 Sch 21 paras 37, 39(1), (3)). At the date at which this volume states the law no such day had been appointed.

10 The Treasure Act 1996 ss 8A, 8C and the Coroners and Justice Act 2009 s 30, Sch 21 para 40 come into force on a day or days to be appointed: see s 182(4)(a), (e). At the date at which this volume states the law no such day had been appointed.

11 Treasure Act 1996 s 8A(1)(a) (s 8A added by the Coroners and Justice Act 2009 s 30(1)). In determining for these purposes whether a person has acquired property in an object, the Treasure Act 1996 s 4 (see PARA 1084) is to be disregarded: s 8A(7) (as so added).

12 Treasure Act 1996 s 8A(1)(b)(i) (as added: see note 11).

13 Ie under the Treasure Act 1996 s 8(1) (see the text to notes 1-4) or s 8A(1).

14 Treasure Act 1996 s 8A(1)(b)(ii) (as added: see note 11).

15 If the office of Coroner for Treasure is vacant, notification must be given to an Assistant Coroner for Treasure: s 8A(6) (as added: see note 11).

16 Treasure Act 1996 s 8A(1) (as added: see note 11). The notice period is 14 days beginning with (1) the day after the person acquires property in the object (s 8A(2)(a) (as so added)); or (2) if later, the day on which the person first believes or has reason to believe that the object is treasure, and that notification in respect of the object has not been given under s 8(1) (see the text to notes 1-4) or s 8A(1) (s 8A(2)(b) (as so added)). For the purposes of an investigation in relation to an object in respect of which notification has been given under s 8A(1), the object is to be presumed, in the absence of evidence to the contrary, to have been found in England and Wales after 24 September 1997 (ie the commencement of s 4 (see PARA 1084)): see s 8A(8) (as so added). Section 8A has effect subject to s 8B (see note 4): s 8A(9) (as so added). As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4.

17 Ie under the Treasure Act 1996 s 8(1) (see the text to notes 1-4) or s 8A(1) (see the text to notes 11-16).

18 Treasure Act 1996 s 8A(3)(a) (as added: see note 11).

19 'Investigation' means an investigation under the Coroners and Justice Act 2009 s 26 (see PARA 1088): Treasure Act 1996 s 8A(10) (as added: see note 11).

20 Treasure Act 1996 s 8A(3)(b) (as added: see note 11). Any person guilty of such an offence is liable, on summary conviction, to (1) imprisonment for a term not exceeding 51 weeks (s 8A(4)(a) (as so added)); (2) a fine of an amount not exceeding level 5 on the standard scale (s 8A(4)(b) (as so added)); or (3) both (s 8A(4)(c) (as so added)). In relation to such an offence committed before the commencement of the Criminal Justice Act 2003 s 280(2), the reference in head (1) above to 51 weeks is to be read as a reference to three months: Coroners and Justice Act 2009 s 30(3). At the date at which this volume states the law the Criminal Justice Act 2003 s 280(2) is not in force.

- 21 Treasure Act 1996 s 8A(5) (as added: see note 11).
- 22 Is an offence under the Treasure Act 1996 s 8 or 8A: see the text to notes 7-9, 17-21.
- 23 As to the meaning of 'month' see PARA 803 note 11.
- 24 Treasure Act 1996 s 8C(1) (added by the Coroners and Justice Act 2009 Sch 21 paras 37, 40). For these purposes (1) a certificate signed by or on behalf of the prosecutor and stating the date on which the evidence came to the prosecutor's knowledge is conclusive evidence to that effect (Treasure Act 1996 s 8C(2)(a) (as so added)); and (2) a certificate to that effect and purporting to be so signed is deemed to be so signed unless the contrary is proved (Treasure Act 1996 s 8C(2)(b) (as so added)).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(1) TREASURE/1088. Jurisdiction of coroners.

1088. Jurisdiction of coroners.

Until a day to be appointed the following provisions have effect¹.

A coroner has jurisdiction to inquire into any treasure which is found in his district² and to inquire who were, or are suspected of being, the finders³, this jurisdiction being exercisable in relation to anything which is treasure⁴ for the purposes of the Treasure Act 1996⁵. The jurisdiction is not exercisable for the purposes of the law relating to treasure trove in relation to anything found after 24 September 1997⁶. An inquest held by virtue of these provisions is to be held without a jury unless the coroner orders otherwise⁷.

As from a day to be appointed the following provisions have effect⁸.

The Coroner for Treasure⁹ must conduct an investigation concerning an object in respect of which notification¹⁰ is given¹¹; and may conduct an investigation concerning an object in respect of which notification has not been given¹² if he or she has reason to suspect that the object is treasure¹³. The Coroner for Treasure may also conduct an investigation concerning an object if he or she has reason to suspect that the object is treasure trove¹⁴. The purpose of an investigation is to ascertain: (1) whether or not the object in question is treasure or treasure trove¹⁵; (2) if it is treasure or treasure trove, who found it, where it was found and when it was found¹⁶. The Lord Chancellor¹⁷ may make regulations (known as 'treasure regulations') for regulating the practice and procedure at or in connection with investigations concerning objects that are or may be treasure or treasure trove (other than the practice and procedure at or in connection with inquests concerning such objects)¹⁸.

The Coroner for Treasure may, as part of an investigation, hold an inquest (known as a 'treasure inquest') concerning the object in question¹⁹. A treasure inquest must be held without a jury, unless the Coroner for Treasure thinks there is sufficient reason for it to be held with a jury²⁰.

Where the Coroner for Treasure is conducting, or proposes to conduct, an investigation concerning:

- 439 (a) an object that would vest in the Crown²¹ or in the franchisee²² under the Treasure Act 1996 if the object was in fact treasure and there were no prior interests or rights²³; or
- 440 (b) an object that would belong to the Crown or the franchisee under the law relating to treasure trove if the object was in fact treasure trove²⁴,

the Secretary of State²⁵ may give notice to the Coroner for Treasure disclaiming, on behalf of the Crown, any title that the Crown may have to the object²⁶, or (as the case may be) the franchisee may give notice to the Coroner for Treasure disclaiming any title that the franchisee may have to the object²⁷. Any such notice may be given only before the making²⁸ by the Coroner for Treasure of a determination²⁹. Where such a notice is given:

- 441 (i) the object is to be treated as not vesting in or belonging to the Crown, or (as the case may be) the franchisee, under the Treasure Act 1996, or the law relating to treasure trove³⁰;
- 442 (ii) the Coroner for Treasure may not conduct an investigation concerning the object or, if an investigation has already begun, may not continue with it³¹;

443 (iii) without prejudice to the interests or rights of others, the object may be delivered to a person in accordance with a code of practice published under the Treasure Act 1996³².

Where the Coroner for Treasure has conducted an investigation, a determination as to the question mentioned in head (1) above, and (where applicable) the questions mentioned in head (2) above, must be made: (A) by the Coroner for Treasure after considering the evidence (where an inquest is not held)³³; (B) by the Coroner for Treasure after hearing the evidence (where an inquest is held without a jury)³⁴; or (c) by the jury after hearing the evidence (where an inquest is held with a jury)³⁵.

1 As from a day to be appointed the Coroners Act 1988 is repealed (see the Coroners and Justice Act 2009 s 182(4)(g)(i), Sch 23 Pt 1); and as from a day to be appointed the Treasure Act 1996 s 7 is substituted (see the Coroners and Justice Act 2009 s 182(4)(e), Sch 21 paras 37, 38). At the date at which this volume states the law no such day or days had been appointed.

2 Coroners Act 1988 s 30(a). As to coroners' districts in England and Wales see **CORONERS** vol 9(2) (2006 Reissue) PARAS 909-910.

3 Coroners Act 1988 s 30(b). As to the finder's duty to notify the coroner of finds see PARA 1087.

4 As to the meaning of 'treasure' see PARA 1086.

5 See the Treasure Act 1996 s 7(1). The provisions of the Coroners Act 1988, so far as applicable, apply to every such inquest (see s 30); but the Coroners Act 1988, and anything saved by virtue of s 36(5) (saving for existing law and practice etc), has effect subject to the Treasure Act 1996 s 7 (see s 7(3)). In practice it will only be necessary for a coroner to hold inquests on finds which a museum wishes to acquire: see the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* para 54. As to the code of practice see PARA 1085. As to the procedure on inquests see PARA 1089.

6 Treasure Act 1996 s 7(2). 24 September 1997 is the date that when s 4 (ownership of treasure which is found: see PARA 1084) came into force: see s 7(2); the Treasure Act 1996 (Commencement No 2) Order 1997, SI 1997/1977, art 2. As to the common law doctrine of treasure trove see PARA 1084.

7 Treasure Act 1996 s 7(4).

8 As from a day to be appointed: (1) as regards England and Wales, the Coroners and Justice Act 2009 Pt 1 Ch 4 (ss 25-31) confers jurisdiction on the Coroner for Treasure in relation to an object that is or may be treasure, or treasure trove found before 24 September 1997 (ie date of the commencement of the Treasure Act 1996 s 4 (see PARA 1084)) (see s 7(5) (s 7 prospectively substituted by the Coroners and Justice Act 2009 Sch 21 paras 37, 38)); (2) the Coroners and Justice Act 2009 s 44 comes into force (see s 182(4)(a)). At the date at which this volume states the law no such day or days had been appointed. As to the Coroner for Treasure see PARA 1084 note 17. As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4.

9 Senior coroners, area coroners and assistant coroners have no functions in relation to objects that are or may be treasure or treasure trove: Coroners and Justice Act 2009 s 26(6). This is subject to Sch 4 para 11 (see PARA 1084 note 17) (which enables an assistant coroner acting as an Assistant Coroner for Treasure to perform functions of the Coroner for Treasure): s 26(6). As to the meaning of 'treasure' for the purposes of the Coroners and Justice Act 2009 see PARA 1086. As to the meaning of 'treasure trove' see PARA 1084 note 2. As to senior coroners, area coroners and assistant coroners see **CORONERS**.

10 Ie under the Treasure Act 1996 s 8(1): see PARA 1087.

11 Coroners and Justice Act 2009 s 26(1). This provision is subject to s 29 (see the text to notes 21-32): see s 26(4).

12 Ie under the Treasure Act 1996 s 8: see PARA 1087.

13 See the Coroners and Justice Act 2009 s 26(2). This provision is subject to s 29 (see the text to notes 21-32): see s 26(4).

14 See the Coroners and Justice Act 2009 s 26(3). This provision is subject to s 29 (see the text to notes 21-32): see s 26(4).

- 15 Coroners and Justice Act 2009 s 26(5)(a).
- 16 Coroners and Justice Act 2009 s 26(5)(b).
- 17 As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.
- 18 Coroners and Justice Act 2009 s 44(1). Treasure regulations may be made only if the Lord Chief Justice, or a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4): see **COURTS**) nominated for these purposes by the Lord Chief Justice, agrees to the making of the regulations: Coroners and Justice Act 2009 s 44(2). Treasure regulations may make (but not so as to be read as limiting the power in s 44(1) (s 44(3)):
- 48 (1) provision for the discharge of an investigation (including provision as to fresh investigations following discharge) (s 44(3)(a));
 - 49 (2) provision for or in connection with the suspension or resumption of investigations (s 44(3)(b));
 - 50 (3) provision for the delegation by the Coroner for Treasure (or an Assistant Coroner for Treasure) of any of his or her functions (s 44(3)(c));
 - 51 (4) provision allowing information to be disclosed or requiring information to be given (s 44(3)(d));
 - 52 (5) provision giving to the Lord Chancellor or the Chief Coroner power to require information from the Coroner for Treasure (s 44(3)(e));
 - 53 (6) provision requiring a summary of specified information given to the Chief Coroner by virtue of head (5) to be included in reports under s 36 (see **CORONERS**) (s 44(3)(f));
 - 54 (7) provision of the kind mentioned in s 43(3)(h) or (i) (see **CORONERS**) (s 44(3)(g)).
- Treasure regulations may apply any provisions of coroners rules: s 44(4). Where Treasure regulations apply any provisions of coroners rules, those provisions (a) may be applied to any extent (s 44(5)(a)); (b) may be applied with or without modifications (s 44(5)(b)); (c) may be applied as amended from time to time (s 44(5)(c)). As to the Lord Chief Justice see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 303; **COURTS** vol 10 (Reissue) PARA 515. As to the Chief Coroner and the coroners rules see **CORONERS**.
- 19 Coroners and Justice Act 2009 s 27(1).
- 20 Coroners and Justice Act 2009 s 27(2). In relation to a treasure inquest held with a jury, ss 8 and 9 (see **CORONERS**) apply with modifications: see s 27(3).
- 21 As to the vesting of treasure in the Crown see PARA 1084.
- 22 For these purposes the 'franchisee', in relation to an object, is the person who (1) was, immediately before the commencement of the Treasure Act 1996 s 4 (see PARA 1084); or (2) apart from that Act, as successor in title, would have been, the franchisee of the Crown in right of treasure trove for the place where the object was found: Coroners and Justice Act 2009 s 29(5). As to the meaning of 'franchisee' under the Treasure Act 1996 see PARA 1084 note 8.
- 23 See the Coroners and Justice Act 2009 s 29(1)(a), (2)(a). The code of practice under the Treasure Act 1996 s 11 (see PARA 1085) may make provision to do with objects in respect of which notice is given under s 29(1) or (2): see s 31(1); and PARA 1085.
- 24 See the Coroners and Justice Act 2009 s 29(1)(b), (2)(b). See also note 23.
- 25 As to the Secretary of State see PARA 802 note 2.
- 26 Coroners and Justice Act 2009 s 29(1).
- 27 Coroners and Justice Act 2009 s 29(2).
- 28 Ie under the Coroners and Justice Act 2009 s 28: see the text to notes 33-35.
- 29 See the Coroners and Justice Act 2009 s 29(3).
- 30 Coroners and Justice Act 2009 s 29(4)(a).

31 Coroners and Justice Act 2009 s 29(4)(b).

32 Coroners and Justice Act 2009 s 29(4)(c). As to the code of practice see the Treasure Act 1996 s 11; and PARA 1085.

33 Coroners and Justice Act 2009 s 28(a).

34 Coroners and Justice Act 2009 s 28(b).

35 Coroners and Justice Act 2009 s 28(c).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(1) TREASURE/1089. Procedure for inquests and investigations.

1089. Procedure for inquests and investigations.

Until a day to be appointed the following provisions have effect¹.

A coroner proposing to conduct an inquest² must notify the British Museum, if his district is in England³, or the National Museum of Wales, if it is in Wales⁴. Before conducting the inquest, the coroner must take reasonable steps to notify any person⁵ who it appears to him may have found the treasure⁶, and any person who, at the time the treasure was found, occupied land⁷ which it appears to him may be where it was found⁸. During the inquest the coroner must take reasonable steps to notify any such person not already notified⁹. Before or during the inquest the coroner must take reasonable steps to obtain from any person so notified¹⁰ the names and addresses of interested persons¹¹ and to notify any interested person whose name and address he obtains¹². The coroner must take reasonable steps to give any interested person notified under these provisions¹³ an opportunity to examine witnesses at the inquest¹⁴. A coroner has no power to make any legal determination as to title between the occupier, the landowner and the finder; and this question will, if necessary, need to be resolved by the courts¹⁵. A coroner's decisions in relation to treasure may be subject to review by the courts¹⁶.

As from a day to be appointed the following provisions have effect¹⁷.

In England and Wales¹⁸, before conducting an investigation¹⁹ concerning an object, the Coroner for Treasure²⁰ must: (1) notify the appropriate national museum²¹; (2) take reasonable steps to notify any person who the coroner thinks may have found the object²², and any person who, at the time the object was found, occupied land that the coroner thinks may be where it was found²³. During an investigation the Coroner for Treasure must take reasonable steps to notify any person within head (2) who has not already been notified²⁴; and before or during an investigation, the Coroner for Treasure must take reasonable steps to obtain the names and addresses of any other interested persons²⁵, and to notify any interested person whose name and address he obtains²⁶. The Coroner for Treasure must take reasonable steps to give any interested person an opportunity to examine witnesses at any inquest held as part of an investigation²⁷.

An interested person may appeal to the Chief Coroner²⁸ against a decision²⁹ made by the Coroner for Treasure (or an Assistant Coroner for Treasure) in connection with an object that is or may be treasure or treasure trove³⁰, or an investigation or inquest³¹ concerning such an object³². An interested person may also appeal to the Chief Coroner against a failure to make such a decision³³. A person who the coroner decides is not an interested person may appeal to the Chief Coroner against that decision³⁴.

On an appeal the Chief Coroner may consider evidence about any matter that appears to be relevant to the substance of the decision, including evidence that concerns a matter arising after the date of the decision³⁵. The Chief Coroner may, if the appeal is allowed, do one or more of the following: (a) in the case of an appeal against a decision, substitute any other decision that could have been made³⁶, or quash the decision and remit the matter for a fresh decision³⁷; (b) in the case of an appeal against a failure to make a decision, make any decision that could have been made³⁸, or remit the matter for a decision to be made³⁹; (c) make any order (including an order as to costs) that the Chief Coroner thinks appropriate⁴⁰.

A party to an appeal may appeal on a question of law to the Court of Appeal from a decision of the Chief Coroner⁴¹; and on such an appeal the Court of Appeal may: (i) affirm the decision⁴²; (ii)

substitute for the decision any decision that the Chief Coroner could have made⁴³; (iii) quash the decision and remit the matter to the Chief Coroner for a fresh decision⁴⁴.

1 As from a day to be appointed, the Treasure Act 1996 s 9 is substituted by the Coroners and Justice Act 2009 s 182(4)(e), Sch 21 paras 37, 41. As from a day to be appointed the Coroners Act 1988 is repealed: see the Coroners and Justice Act 2009 s 182(4)(g)(i), Sch 23 Pt 1. At the date at which this volume states the law no such day or days had been appointed.

2 'Inquest' means an inquest held under the Treasure Act 1996 s 7 (see PARA 1088): s 9(1). As to the procedure where a find has been reported to the coroner, and as to treasure inquests see the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* Pt G (paras 53-62). As to the code of practice see PARA 1085. Detailed guidelines on the procedure to be followed by coroners in treasure inquests are set out in *Home Office Circular 44/1997*.

3 Treasure Act 1996 s 9(2)(a). As to coroners' districts in England see **CORONERS** vol 9(2) (2006 Reissue) PARA 909. As to the British Museum see PARA 825. As to the meaning of 'England' see PARA 804 note 2.

4 Treasure Act 1996 s 9(2)(b). As to coroners' districts in Wales see **CORONERS** vol 9(2) (2006 Reissue) PARA 910. As to the National Museum of Wales see PARA 892. As to the meaning of 'Wales' see PARA 802 note 4.

5 As to the meaning of 'person' see PARA 803 note 16.

6 Treasure Act 1996 s 9(3)(a). As to the meaning of 'treasure' see PARA 1086.

7 As to the meaning of 'land' see PARA 804 note 30.

8 Treasure Act 1996 s 9(3)(b).

9 Treasure Act 1996 s 9(4).

10 Ie under the Treasure Act 1996 s 9(3) or (4): see the text to notes 5-9.

11 Treasure Act 1996 s 9(5)(a). 'Interested person' means a person who appears to the coroner to be likely to be concerned with the inquest: (1) as the finder of the treasure or having been otherwise involved in the find (s 9(7)(a)); (2) as the occupier, at the time the treasure was found, of the land where it was found (s 9(7)(b)); or (3) as having had an interest in that land at that time or since (s 9(7)(c)).

12 Treasure Act 1996 s 9(5)(b).

13 Ie under the Treasure Act 1996 s 9(3), (4) or (5): see the text to notes 5-12.

14 Treasure Act 1996 s 9(6).

15 *A-G v Moore* [1893] 1 Ch 676; *A-G v Trustees of the British Museum* [1903] 2 Ch 598; *A-G of the Duchy of Lancaster v GE Overton (Farms) Ltd* [1982] Ch 277, [1982] 1 All ER 524, CA; *Waverley Borough Council v Fletcher* [1996] QB 334, [1995] 4 All ER 756, CA.

16 Ie under the Coroners Act 1988 s 13 (see **CORONERS** vol 9(2) (2006 Reissue) PARA 1073) or by way of judicial review: see the *Treasure Act 1996 Code of Practice (2nd Revision) (England and Wales)* para 61. The Coroners Act 1988 s 13 applies to inquests into treasure as well as into deaths; but, where an application is made both with the Attorney General's consent under s 13 and for judicial review, it is appropriate to consider the matter under s 13 only: *R v HM Coroner for Wiltshire, ex p Chaddock* (1992) 157 JP 209, DC. As to judicial review see **CORONERS** vol 9(2) (2006 Reissue) PARAS 1074-1075; and **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

17 As from a day to be appointed, the Treasure Act 1996 s 9 is substituted by the Coroners and Justice Act 2009 s 182(4)(e), Sch 21 paras 37, 41. As from a day to be appointed the Coroners and Justice Act 2009 s 40 comes into force on a day to be appointed: s 182(4)(a). At the date at which this volume states the law no such day or days had been appointed.

18 See the Treasure Act 1996 s 9(6) (as substituted: see note 17).

19 'Investigation' means an investigation under the Coroners and Justice Act 2009 s 26 (see PARA 1088): Treasure Act 1996 s 9(5) (as substituted: see note 17).

20 As to the Coroner for Treasure see PARA 1084 note 17.

- 21 Treasure Act 1996 s 9(1)(a) (as substituted: see note 17). 'Appropriate national museum' means the British Museum, if the object in question was found or is believed to have been found in England; and the National Museum of Wales, if it was found or is believed to have been found in Wales: s 9(5) (as so substituted).
- 22 Treasure Act 1996 s 9(1)(b)(i) (as substituted: see note 17). As to the duty to notify the Coroner for Treasure of finds see PARA 1087.
- 23 Treasure Act 1996 s 9(1)(b)(ii) (as substituted: see note 17).
- 24 Treasure Act 1996 s 9(2) (as substituted: see note 17).
- 25 Treasure Act 1996 s 9(3)(a) (as substituted: see note 17). 'Interested person', in relation to an object that is or may be treasure or treasure trove, or an investigation or inquest under the Coroners and Justice Act 2009 Pt 1 Ch 4 (ss 25-31) (see PARA 1088) concerning such an object, means: (1) the British Museum, if the object was found or is believed to have been found in England; (2) the National Museum of Wales, if the object was found or is believed to have been found in Wales; (3) the finder of the object or any person otherwise involved in the find; (4) the occupier, at the time the object was found, of the land where it was found or is believed to have been found; (5) a person who had an interest in that land at that time or who has had such an interest since; (6) any other person who the Coroner for Treasure thinks has a sufficient interest: s 47(6) (definition applied by the Treasure Act 1996 s 9(5) (as so substituted)).
- 26 Treasure Act 1996 s 9(3)(b) (as substituted: see note 17).
- 27 Treasure Act 1996 s 9(4) (as substituted: see note 17).
- 28 As to the Chief Coroner see **CORONERS**.
- 29 Ie including a decision embodied in the determination of a question mentioned in the Coroners and Justice Act 2009 s 26(5)(a) or (b): see PARA 1088.
- 30 Coroners and Justice Act 2009 s 40(3)(a). As to the meaning of 'treasure trove' see PARA 1084 note 2.
- 31 Ie under the Coroners and Justice Act 2009 Pt 1 Ch 4 (ss 25-31): see PARA 1088.
- 32 Coroners and Justice Act 2009 s 40(3)(b).
- 33 Coroners and Justice Act 2009 s 40(4)(b).
- 34 Coroners and Justice Act 2009 s 40(5).
- 35 See the Coroners and Justice Act 2009 s 40(7).
- 36 See the Coroners and Justice Act 2009 s 40(8)(b)(i).
- 37 See the Coroners and Justice Act 2009 s 40(8)(b)(ii).
- 38 See the Coroners and Justice Act 2009 s 40(8)(c)(i).
- 39 See the Coroners and Justice Act 2009 s 40(8)(c)(ii).
- 40 See the Coroners and Justice Act 2009 s 40(8)(d).
- 41 See the Coroners and Justice Act 2009 s 40(9). As to the Court of Appeal see **COURTS** vol 10 (Reissue) PARA 634 et seq.
- 42 See the Coroners and Justice Act 2009 s 40(10)(a).
- 43 See the Coroners and Justice Act 2009 s 40(10)(b).
- 44 See the Coroners and Justice Act 2009 s 40(10)(c).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(2) OBJECTS ON LOAN/1090. The government indemnity scheme.

(2) OBJECTS ON LOAN

1090. The government indemnity scheme.

The Secretary of State¹ or, in relation to Wales, the Welsh Ministers² may undertake to indemnify certain institutions, bodies or persons³ for the loss of, or damage to⁴, any object belonging to it while on loan to any other such institution, body or person, in such cases and to such extent as he or they may determine⁵. However, the Secretary of State or, as the case may be, the Welsh Ministers must not give such an undertaking unless:

- 444 (1) he or they consider the loan will facilitate public access to the object in question or contribute materially to public understanding or appreciation of it⁶;
- 445 (2) the loan is made in accordance with conditions approved by the Secretary of State and the Treasury or by the Welsh Ministers, and the Secretary of State or the Welsh Ministers are satisfied that appropriate arrangements have been made for the safety of the object while it is on loan⁷.

For each of the successive periods of six months⁸ ending with 31 March and 30 September in each year, the Secretary of State or, as appropriate, the Welsh Ministers must prepare a report specifying⁹: (a) the number of undertakings given by him or them during that period¹⁰; and (b) the amount or value, expressed in sterling, of any contingent liabilities as at the end of that period in respect of such of the undertakings given by him or them at any time as remain outstanding at the end of that period¹¹.

1 The functions of the Secretary of State under the National Heritage Act 1980 ss 16, 16A may be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by the Secretary of State: (1) either wholly or to such extent as may be specified in the authorisation; (2) either generally or in such cases or areas as may be so specified; and (3) either unconditionally or subject to the fulfilment of such conditions as may be so specified: see the Contracting Out (Functions in Relation to Cultural Objects) Order 2005, SI 2005/1103, arts 2(b), 3. As to the Secretary of State see PARA 802. As to the meaning of 'person' see PARA 803 note 16.

2 The functions of the Secretary of State under the National Heritage Act 1980 ss 16, 16A, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

3 The institutions, bodies and persons are: (1) a museum, art gallery or similar institution in the United Kingdom for the preservation for the public benefit of a collection of historic, artistic or scientific interest and which is maintained (a) wholly or mainly out of money provided by Parliament or money appropriated by Measure; or (b) by a local authority or university in the United Kingdom; (2) a library maintained (a) as in head (1)(a) above, or (b) by a library authority, or the main function of which is to serve the needs of teaching or research at a United Kingdom university; (3) the National Trust; (4) the National Trust for Scotland; or (5) any other body or person approved by the Secretary of State with Treasury consent or, in relation to Wales, by the Welsh Ministers: National Heritage Act 1980 s 16(2)(a)-(e) (s 16(2) amended by the Museums and Galleries Act 1992 s 10(1); National Heritage Act 1980 s 16(2)(e) further amended by SI 1992/1311). 'Library authority' means a library authority within the meaning of the Public Libraries and Museums Act 1964 (see PARA 926), a statutory library authority within the meaning of the Public Libraries (Scotland) Act 1955 or an Education and Library Board within the meaning of the Education and Libraries (Northern Ireland) Order 1972, SI 1972/1263; and 'university' includes a university college and a college, school or hall of a university: National Heritage Act

1980 s 16(6). As to the meaning of 'United Kingdom' see PARA 804 note 2. As to the National Trust see PARA 979. As to the meaning of 'Treasury' see PARA 809 note 4.

4 References to the loss of or damage to, or the safety of, an object while on loan include references to the loss of or damage to, or the safety of, the object while being taken to or returned from the place where it is to be or has been kept while on loan: National Heritage Act 1980 s 16(7).

5 National Heritage Act 1980 s 16(1) (amended by the Museums and Galleries Act 1992 ss 10(1), 11(3), Sch 9; SI 1992/1311). As to such indemnities see further the *Government Indemnity Scheme Guidelines for National Institutions* (Department for Culture, Media and Sport: March 2004) a copy of which is available on the DCMS website at www.culture.gov.uk. In relation to Wales, Museums Archives and Libraries Wales ('CyMAL'), a division of the Welsh Assembly Government, advises the Minister for Heritage on the Government Indemnity Scheme; for further information see the Welsh Assembly Government website at www.new.wales.gov.uk.

6 See the National Heritage Act 1980 s 16(3) (amended by SI 1992/1311).

7 See the National Heritage Act 1980 s 16(4) (s 16(4), (5) amended by SI 1992/1311). See also note 4. The provisions of the National Heritage Act 1980 s 16(1)-(4) apply in relation to the loan of an object belonging to an institution, body or person in Northern Ireland with the substitution for references to the Secretary of State and the Treasury of references to the Department of Education for Northern Ireland and the Department of Finance for Northern Ireland: National Heritage Act 1980 s 16(5) (as so amended).

8 As to the meaning of 'month' see PARA 803 note 11.

9 National Heritage Act 1980 s 16A(1) (s 16A added by the Museums and Galleries Act 1992 s 10(2); National Heritage Act 1980 s 16A(1) amended by SI 1992/1311). A report by the Secretary of State must be laid before Parliament not later than two months after the end of the period to which it relates: see the National Heritage Act 1980 s 16A(2) (as so added). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941. As to the laying of documents by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 86; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

The National Heritage Act 1980 s 16A(1), (2) applies in relation to undertakings given by the Department for Education for Northern Ireland with the substitution for references to the Secretary of State of references to that department and with the substitution for the reference to Parliament of a reference to the Northern Ireland Assembly: s 16A(3) (as so added; and amended by SI 1992/1311). As to the Northern Ireland Assembly see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

10 National Heritage Act 1980 s 16A(1)(a) (as added: see note 9).

11 National Heritage Act 1980 s 16A(1)(b) (as added: see note 9).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(2) OBJECTS ON LOAN/1091. Protection of cultural objects on loan from outside the United Kingdom.

1091. Protection of cultural objects on loan from outside the United Kingdom.

An object is a protected object¹ if the following conditions are met when it enters the United Kingdom². The conditions are:

- 446 (1) the object is usually kept outside the United Kingdom³;
- 447 (2) it is not owned by a person⁴ resident in the United Kingdom⁵;
- 448 (3) its import does not contravene a prohibition or restriction on the import of goods, imposed by or under any enactment⁶, that applies to the object, a part of it or anything it conceals⁷;
- 449 (4) it is brought to the United Kingdom for public display⁸ in a temporary exhibition⁹ at a museum or gallery¹⁰; and
- 450 (5) the museum or gallery has complied with any requirements prescribed by regulations made by the Secretary of State about the publication of specified information about the object¹¹.

The protection continues only so long as the object is in the United Kingdom for any of the specified purposes¹², and for not more than 12 months beginning with the day when the object enters the United Kingdom¹³. A new period of protection begins each time an object enters the United Kingdom and the conditions in heads (1) to (5) above are met¹⁴.

While an object is protected it may not be seized or forfeited¹⁵ under any enactment or rule of law, unless it is seized or forfeited under or by virtue of an order made by a court in the United Kingdom¹⁶, and the court is required to make the order under, or under provision giving effect to, a Community obligation¹⁷ or any international treaty¹⁸. Protection does not affect liability for an offence of importing, exporting or otherwise dealing with the object, but¹⁹ any power of arrest or otherwise to prevent such an offence is not exercisable so as to prevent the object leaving the United Kingdom²⁰.

The above provisions bind the Crown²¹.

Objects loaned by United Kingdom institutions to borrowers outside the United Kingdom may be covered by similar government indemnity schemes operating in the relevant overseas jurisdictions, and may also be protected from judicial seizure or other involvement in judicial proceedings by means of local immunity statutes²².

Objects temporarily loaned abroad may require an export licence²³.

1 Ie an object protected under the Tribunals, Courts and Enforcement Act 2007 s 135: see the text to notes 15-20.

2 Tribunals, Courts and Enforcement Act 2007 s 134(1). 'United Kingdom' includes the territorial sea adjacent to the United Kingdom (within the meaning given by the Territorial Sea Act 1987 s 1: see **WATER AND WATERWAYS** vol 100 (2009) PARA 31): Tribunals, Courts and Enforcement Act 2007 s 137(1), (10). As to the meaning of 'United Kingdom' generally see PARA 804 note 2.

3 Tribunals, Courts and Enforcement Act 2007 s 134(2)(a).

4 A person owns an object for these purposes whether he owns it beneficially or not and whether alone or with others: Tribunals, Courts and Enforcement Act 2007 s 134(3). As to the meaning of 'person' see PARA 803 note 16.

5 Tribunals, Courts and Enforcement Act 2007 s 134(2)(b). An individual is resident in the United Kingdom if he is ordinarily resident in the United Kingdom for the purposes of income tax, or would be if he were receiving income on which tax is payable: s 137(1), (6). The trustees of a settlement (or, in Scotland, the trustees of a trust) are resident in the United Kingdom if they are resident and ordinarily resident in the United Kingdom for the purposes of income tax, or would be if they were receiving income on which tax is payable: s 137(1), (7). A partnership (including a limited partnership) or unincorporated association is resident in the United Kingdom if it is established under the law of any part of the United Kingdom: s 137(1), (8). A body corporate is resident in the United Kingdom if it is incorporated under the law of any part of the United Kingdom: s 137(1), (9).

6 'Enactment' includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament: Tribunals, Courts and Enforcement Act 2007 s 137(1), (2). As to the Scottish Parliament see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

7 Tribunals, Courts and Enforcement Act 2007 s 134(2)(c).

8 'Public display' means display to which the public are admitted, on payment or not, but does not include display with a view to sale: Tribunals, Courts and Enforcement Act 2007 s 137(3).

9 'Temporary exhibition' means an exhibition of one or more objects which is open to the public for a period of less than 12 months, whether at a single location or at a succession of locations: Tribunals, Courts and Enforcement Act 2007 s 137(4). As to the meaning of 'month' see PARA 803 note 11.

10 Tribunals, Courts and Enforcement Act 2007 s 134(2)(d). A temporary exhibition is at a museum or gallery if it is held at or under the direction of the museum or gallery: s 137(5). 'Museum or gallery' means an institution in the United Kingdom approved by the appropriate authority: s 136(1). The matters that the appropriate authority must have regard to when deciding whether to approve an institution include: (1) the institution's procedures for establishing the provenance and ownership of objects (s 136(2)(a)); and (2) in particular, compliance by the institution with guidance about such procedures published by the Secretary of State from time to time (s 136(2)(b)). The appropriate authority may withdraw approval from an institution if it thinks fit, and, in particular, if: (a) it thinks that the institution's procedures for establishing the provenance or ownership of objects are inadequate (because of the institution's failure to comply with guidance published by the Secretary of State or for some other reason) (s 136(3)(a)); or (b) the institution has failed to comply with a requirement of regulations under s 134(9) (see note 11) (s 136(3)(b)). The withdrawal of approval from an institution does not affect the application of ss 134, 135 to any object which is a protected object immediately before the withdrawal: s 136(4). 'Appropriate authority' means: (i) the Secretary of State, in relation to an institution in England (s 136(5)(a)); (ii) the Welsh Ministers, in relation to an institution in Wales (s 136(5)(b)); (iii) the Scottish Ministers, in relation to an institution in Scotland (s 136(5)(c)); and (iv) the Department for Culture, Art and Leisure, in relation to an institution in Northern Ireland (s 136(5)(d)). As to the Secretary of State and the Welsh Ministers see PARA 802. As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4. As to the Scottish Ministers and devolved government in Northern Ireland see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the approval of museums and galleries in England see further the *Note on the approval of museums and galleries under Section 136 of the Tribunals, Courts and Enforcement Act 2007* (Department for Culture, Media and Sport April 2008). A copy of the Note and a list of approved institutions is available on the DCMS website at www.culture.gov.uk.

11 Tribunals, Courts and Enforcement Act 2007 s 134(2)(e). The Secretary of State may make regulations requiring a museum or gallery to provide persons with specified information about an object in specified circumstances (which may include in particular compliance with conditions imposed by or under the regulations): s 134(9). Such regulations may not be made without the consent of the Scottish Ministers, the Welsh Ministers and the Department for Culture, Art and Leisure in Northern Ireland (s 134(10)(a)), and must be made by statutory instrument (s 134(10)(b)). A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 134(11). As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516. As to the regulations made see the Protection of Cultural Objects on Loan (Publication and Provision of Information) Regulations 2008, SI 2008/1159.

12 Tribunals, Courts and Enforcement Act 2007 s 134(4)(a). The specified purposes are: (1) public display in a temporary exhibition at a museum or gallery (s 134(7)(a)); (2) going to or returning from public display in a temporary exhibition at a museum or gallery (s 134(7)(b)); (3) related repair, conservation or restoration (s 134(7)(c)); (4) going to or returning from related repair, conservation or restoration (s 134(7)(d)); (5) leaving the United Kingdom (s 134(7)(e)). Repair, conservation or restoration is related if it is carried out in the United Kingdom and is done (a) to prepare the object for public display in a temporary exhibition at a museum or gallery (s 134(8)(a)); or (b) because of damage suffered in the course of something within s 134(7) (s 134(8)(b)).

13 Tribunals, Courts and Enforcement Act 2007 s 134(4)(b). However, the protection continues after the end of this period if the object has suffered damage while protected, and (1) it is undergoing repair, conservation or

restoration in the United Kingdom because of the damage (s 134(5)(a)); or (2) it is leaving the United Kingdom following repair, conservation or restoration because of the damage (s 134(5)(b)).

14 Tribunals, Courts and Enforcement Act 2007 s 134(6).

15 In the Tribunals, Courts and Enforcement Act 2007 s 135 references to seizure or forfeiture in relation to an object include references to: (1) taking control of the object under Sch 12 (in England and Wales) (see **CIVIL PROCEDURE** vol 12 (2009) PARA 1386 et seq) (s 135(3)(a)); (2) execution or distress (in England and Wales or Northern Ireland) (s 135(3)(b)); (3) diligence or sequestration (in Scotland) (s 135(3)(c)); (4) seizure, confiscation or forfeiture, or any other measure relating to the custody or control of the object, in the course of a criminal investigation or criminal proceedings (against the owner, the museum or gallery or any other person) (s 135(3)(d)); (5) the making or enforcement of an order relating to the custody or control of the object in civil proceedings (against the owner, the museum or gallery or any other person) (s 135(3)(e)). As to execution generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1265 et seq. As to distress generally see **DISTRESS** vol 13 (2007 Reissue) PARA 902 et seq.

16 Tribunals, Courts and Enforcement Act 2007 s 135(1)(a).

17 As to the meaning of 'Community obligation' see the European Communities Act 1972 s 1, Sch 1 Pt II; Interpretation Act 1978 s 5, Sch 1. As from 1 December 2009 the term 'Community obligation' in the European Communities Act 1972 Sch 1 Pt II is replaced by 'EU obligation': see the European Union (Amendment) Act 2008 s 3, Schedule Pt 1; European Union (Amendment) Act 2008 (Commencement No 1) Order 2009, SI 2009/3143, art 2.

18 Tribunals, Courts and Enforcement Act 2007 s 135(1)(b).

19 In subject to the Tribunals, Courts and Enforcement Act 2007 s 135(1): see the text to notes 15-18.

20 Tribunals, Courts and Enforcement Act 2007 s 135(2).

21 Tribunals, Courts and Enforcement Act 2007 s 138.

22 As to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property see PARA 1094. As to the return of cultural objects unlawfully removed from member states see PARA 1095 et seq. As to dealing in tainted cultural objects see PARA 1100. As to Nazi spoliation see PARAS 1102-1103.

23 See PARA 1092.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(3) EXPORT AND IMPORT CONTROL/1092. Export controls.

(3) EXPORT AND IMPORT CONTROL

1092. Export controls.

The export of antiques and other cultural objects is subject to control under both United Kingdom and European Union (EU) law¹.

The export of cultural goods² outside the customs territory of the EU is subject to the presentation of an export licence³. The export licence is valid throughout the EU⁴. The direct export from the customs territory of the EU of national treasures having artistic, historic or archaeological value which are not cultural goods is subject to the national law of the member state of export⁵.

The Secretary of State⁶ may by order make provision for or in connection with the imposition of export controls in relation to goods of any description; and for this purpose 'export controls', in relation to any goods, means the prohibition or regulation of their exportation from the United Kingdom⁷ or their shipment as stores⁸. Any objects of cultural interest⁹ manufactured or produced more than 50 years before the date of exportation¹⁰ except:

- 451 (1) postage stamps and other articles of philatelic interest;
- 452 (2) birth, marriage or death certificates or other documents relating to the personal affairs of the exporter or the spouse of the exporter;
- 453 (3) letters or other writings¹¹ written by or to the exporter or the spouse of the exporter; and
- 454 (4) goods exported by, and being the personal property of, the manufacturer or producer thereof, or the spouse, widow or widower of that person,

are prohibited to be exported to any destination except under the authority of a licence in writing granted by the Secretary of State, and in accordance with all the conditions attached to the licence¹².

The export control regime for cultural goods is operated by the Export Licensing Unit at the Museums, Libraries and Archives Council¹³. An application for an export licence may be referred to an expert adviser for scrutiny as to national importance¹⁴. There is a Reviewing Committee on the Export of Works of Art which is a non-statutory independent body set up to advise the Secretary of State whether a cultural object for which an application for an export licence has been made is of national importance¹⁵. Objects are assessed against the following criteria, known as the 'Waverley criteria':

- 455 (a) whether the object is so closely connected with the history and national life of the United Kingdom that its departure would be a misfortune;
- 456 (b) whether it is of outstanding aesthetic importance;
- 457 (c) whether it is of outstanding significance for the study of some particular branch of art, learning or history¹⁶.

If the reviewing committee decides that an object satisfies any of the Waverley criteria, the committee recommends to the Secretary of State that a decision on the licence application should be deferred for a specified period to enable an offer to purchase to be made at or above

the fair market price, with a view to keeping the object in the United Kingdom¹⁷. If the object does not satisfy one or more of the Waverley criteria, the committee recommends that the export licence should be granted¹⁸.

Where a decision has been deferred and an offer to purchase is received from a public source such as a museum or gallery, the owner of the object is under no compulsion to accept the offer but the existence of the offer is taken into account in deciding on the licence application and a licence will normally be refused¹⁹. Where an offer to purchase is received from a private source, the existence of the offer is only taken into account where it is combined with a signed undertaking to guarantee reasonable public access to the object, to provide satisfactory conservation conditions and not to sell it for a specified period²⁰.

The Reviewing Committee is guided in its policy advice by the membership of the Advisory Council on the Export of Works of Art which was established to provide a forum for the discussion of the principles and operation of the export control system²¹. The Reviewing Committee publishes an annual report which is presented to Parliament and outlines the committee's policy discussions and gives detailed accounts of the cases considered²².

The export control regime for cultural goods applies to museums and galleries which must apply for export licences where appropriate, even when arranging a temporary loan of an object for an exhibition abroad²³. A temporary licence application by a national museum or gallery is not, however, normally referred to an expert adviser²⁴.

1 See the text to notes 2-24.

2 'Cultural goods' means:

- 55 (1) archaeological objects more than 100 years old which are the products of excavations and finds on land or under water, archaeological sites, archaeological collection;
- 56 (2) elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years;
- 57 (3) pictures and paintings, other than those included in head (4) or (5) below, executed entirely by hand in any medium and on any material, of a value of £103,000 or more;
- 58 (4) water-colours, gouaches and pastels executed entirely by hand on any material, of a value of £20,600 or more;
- 59 (5) mosaics in any material executed entirely by hand, other than those falling in head (1) or (2) above, and drawings in any medium executed entirely by hand on any material, of a value of £10,200 or more;
- 60 (6) original engravings, prints, serigraphs and lithographs with their respective plates and original posters, of a value of £10,200 or more;
- 61 (7) original sculptures or statuary and copies produced by the same process as the original, other than those in head (1) above, of a value of £34,300 or more;
- 62 (8) photographs, films and negatives thereof, of a value of £10,200 or more;
- 63 (9) incunabula and manuscripts, including maps and musical scores, singly or in collections;
- 64 (10) books more than 100 years old, singly or in collections, of a value of £34,300 or more;
- 65 (11) printed maps more than 200 years old, of a value of £10,200 or more;
- 66 (12) archives, and any elements thereof, of any kind or any medium which are more than 50 years old;
- 67 (13) collections and specimens from zoological, botanical, mineralogical or anatomical collections; and collections of historical, palaeontological, ethnographic or numismatic interest, in each case of a value of £34,300 or more;

- 68 (14) means of transport more than 75 years old, of a value of £34,300 or more;
- 69 (15) any other antique items not included in heads (1)-(14) above more than 50 years old, and of a value of £34,300 or more: EC Council Regulation 116/2009 (OJ L39, 10.2.2009, p 1) on the export of cultural goods Annex 1; *UK Export Licensing for Cultural Goods: Procedures and Guidance for Exporters of Works of Art and other Cultural Goods* (Museums, Libraries and Archives Council: 2009) Table 2. A copy of the guidance is available on the Museums, Libraries and Archives Council website at www.mla.gov.uk.

3 See EC Council Regulation 116/2009 (OJ L39, 10.2.2009, p 1) art 2(1), (2). As to the direct effect of EU regulations see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 24. As to the return of cultural objects unlawfully removed from member states see PARA 1095 et seq.

4 EC Council Regulation 116/2009 (OJ L39, 10.2.2009, p 1) art 2(3).

5 See EC Council Regulation 116/2009 (OJ L39, 10.2.2009, p 1) art 2(4).

6 As to the Secretary of State see PARA 802.

7 As to the meaning of 'United Kingdom' see PARA 804 note 2.

8 See the Export Control Act 2002 s 1(1), (2); and **TRADE AND INDUSTRY** vol 97 (2010) PARA 823 et seq.

9 'Objects of cultural interest' includes objects of historical or scientific interest: Export Control Act 2002 s 11(1).

10 'Exportation' includes shipment as stores and, unless the context otherwise requires, means exportation from the United Kingdom to any destination except for the Isle of Man: Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 1(2).

11 As to the meaning of 'writing' see PARA 805 note 14.

12 See the Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 2, Schedule. A licence granted by the Secretary of State under art 2 may be: (1) general or specific; (2) unlimited or limited so as to expire on a specified date unless renewed; and (3) subject to or without conditions, and any such condition may require any act or omission before or after the exportation of objects under the licence: art 3(1). Any such licence may be varied, suspended or revoked by the Secretary of State at any time and in such circumstances and on such terms as the Secretary of State thinks fit, by serving a notice to that effect on the holder of the licence: art 3(2). Pursuant to these powers the Secretary of State has issued the Open General Export Licence (Objects of Cultural Interest) dated 1 May 2004, a copy of which can be found on the Museums, Libraries and Archives Council website at www.mla.gov.uk. See further **TRADE AND INDUSTRY** vol 97 (2010) PARAS 823 et seq.

The functions of the Secretary of State in relation to such licences may be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by the Secretary of State: see the Contracting Out (Functions in Relation to Cultural Objects) Order 2005, SI 2005/1103, arts 2(c), 3. As to the meaning of 'person' see PARA 803 note 16.

13 As to the Museums, Libraries and Archives Council see PARA 818.

14 See *UK Export Licensing for Cultural Goods: Procedures and Guidance for Exporters of Works of Art and other Cultural Goods* (Museums, Libraries and Archives Council: 2009) paras 8, 17-19.

15 See *UK Export Licensing for Cultural Goods: Procedures and Guidance for Exporters of Works of Art and other Cultural Goods* (Museums, Libraries and Archives Council: 2009) para 28.

16 See *UK Export Licensing for Cultural Goods: Procedures and Guidance for Exporters of Works of Art and other Cultural Goods* (Museums, Libraries and Archives Council: 2009) paras 29-31.

17 See *UK Export Licensing for Cultural Goods: Procedures and Guidance for Exporters of Works of Art and other Cultural Goods* (Museums, Libraries and Archives Council: 2009) para 32. See also *R v Secretary of State for National Heritage, ex p J Paul Getty Trust* (27 October 1994, unreported), CA (an application for judicial review of the decision of the Secretary of State to extend the period for which an application for an export licence was to be deferred).

18 See *UK Export Licensing for Cultural Goods: Procedures and Guidance for Exporters of Works of Art and other Cultural Goods* (Museums, Libraries and Archives Council: 2009) para 32.

19 See *UK Export Licensing for Cultural Goods: Procedures and Guidance for Exporters of Works of Art and other Cultural Goods* (Museums, Libraries and Archives Council: 2009) paras 53-55.

20 See *UK Export Licensing for Cultural Goods: Procedures and Guidance for Exporters of Works of Art and other Cultural Goods* (Museums, Libraries and Archives Council: 2009) paras 56-58.

21 See *UK Export Licensing for Cultural Goods: Procedures and Guidance for Exporters of Works of Art and other Cultural Goods* (Museums, Libraries and Archives Council: 2009) para 75, Appendix E.

22 See *UK Export Licensing for Cultural Goods: Procedures and Guidance for Exporters of Works of Art and other Cultural Goods* (Museums, Libraries and Archives Council: 2009) para 77.

23 See *UK Export Licensing for Cultural Goods: Procedures and Guidance for Exporters of Works of Art and other Cultural Goods* (Museums, Libraries and Archives Council: 2009) para 20.

24 See *UK Export Licensing for Cultural Goods: Procedures and Guidance for Exporters of Works of Art and other Cultural Goods* (Museums, Libraries and Archives Council: 2009) para 20.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(3) EXPORT AND IMPORT CONTROL/1093. Iraqi cultural property.

1093. Iraqi cultural property.

Under European Union (EU) law there is prohibited the import of or the introduction into the territory of the EU of, the export of or removal from the territory of the EU of, and the dealing in, Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance, if they have been illegally removed from locations in Iraq¹.

The importation or exportation² of any item of illegally removed Iraqi cultural property³ is prohibited⁴. Any person⁵ who holds or controls any item of illegally removed Iraqi cultural property must cause the transfer of that item to a constable⁶; and any person who fails to do so is guilty of an offence, unless he proves⁷ that he did not know and had no reason to suppose that the item in question was illegally removed Iraqi cultural property⁸. Similarly, any person who deals in any item⁹ of illegally removed Iraqi cultural property is guilty of an offence, unless he proves¹⁰ that he did not know and had no reason to suppose that the item in question was illegally removed Iraqi cultural property¹¹.

1 See EC Council Regulation 1210/2003 (OJ L169, 8.7.2003, p 6) concerning certain specific restrictions on economic and financial relations with Iraq, art 3. As to the direct effect of EC regulations see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 24.

2 'Export' includes shipment as stores: Iraq (United Nations Sanctions) Order 2003, SI 2003/1519, art 4. 'Shipment' includes loading into an aircraft, and 'shipped' and cognate expressions must be construed accordingly; and 'stores' means goods for use in a ship or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting: Customs and Excise Management Act 1979 s 1(1) (definition applied by the Iraq (United Nations Sanctions) Order 2003, SI 2003/1519, art 4).

3 'Illegally removed Iraqi cultural property' means Iraqi cultural property and any other item of archaeological, historical, cultural, rare scientific or religious importance illegally removed from any location in Iraq since 6 August 1990; and it is immaterial whether the removal was illegal under the law of a part of the United Kingdom or of any other country or territory: Iraq (United Nations Sanctions) Order 2003, SI 2003/1519, art 8(4). As to the meaning of 'United Kingdom' see PARA 804 note 2.

4 Iraq (United Nations Sanctions) Order 2003, SI 2003/1519, art 8(1).

5 As to the meaning of 'person' see PARA 803 note 16.

6 As to the office of constable see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

7 As to the standard of proof on the accused see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1370-1371.

8 Iraq (United Nations Sanctions) Order 2003, SI 2003/1519, art 8(2). Any person guilty of an offence under art 8(2) or 8(3) (see the text to notes 9-11) is liable: (1) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both (art 20(1)(a)); or (2) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both (art 20(1)(b)). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. Where any body corporate is guilty of such an offence, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly: art 20(6). Notwithstanding anything in the Magistrates' Courts Act 1980 s 127(1) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 589), a summary offence may be tried by a magistrates' court in England and Wales if an information is laid at any time within three years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his knowledge: Iraq (United Nations Sanctions) Order 2003, SI 2003/1519, art 20(7). As to the meaning of 'month' see PARA 803 note 11. A certificate signed by or on behalf of the prosecutor as to the date on which

such evidence came to his knowledge is conclusive evidence of that fact (art 20(10)(a)); and a certificate purporting to be so signed must be presumed to be so signed unless the contrary is proved (art 20(10)(b)). Proceedings against any person for an offence may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being: art 20(11). No proceedings for an offence, other than for a summary offence, may be instituted except by the Secretary of State or with the consent of the Attorney General: provided that this provision does not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained: see art 20(15). As to the Secretary of State see PARA 802. As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529. As to powers of arrest see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 908 et seq.

9 A person deals in an item if (and only if) he: (1) acquires, disposes of, imports or exports it (Iraq (United Nations Sanctions) Order 2003, SI 2003/1519, art 8(5)(a)); (2) agrees with another to do an act mentioned in head (1) (art 8(5)(b)); or (3) makes arrangements under which another person does such an act or under which another person agrees with a third person to do such an act (art 8(5)(c)). 'Acquires' means buys, hires, borrows or accepts (art 8(6)(a)); 'disposes of' means sells, lets on hire, lends or gives (art 8(6)(b)); and in relation to agreeing or arranging to do an act, it is immaterial whether the act is agreed or arranged to take place in the United Kingdom or elsewhere (art 8(6)(c)).

10 See note 7.

11 Iraq (United Nations Sanctions) Order 2003, SI 2003/1519, art 8(3). As to the penalty for such an offence see note 8.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(4) ILLICIT TRADE/(i) UNESCO Convention/1094. The Convention.

(4) ILLICIT TRADE

(i) UNESCO Convention

1094. The Convention.

The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property¹ provides that the import, export or transfer of ownership of cultural property² effected contrary to the provisions adopted under the convention by the states party to it, is illicit³. The states party to the convention⁴ undertake:

- 458 (1) to oppose the illicit import, export and transfer of ownership of cultural property and to help to make the necessary reparations⁵;
- 459 (2) to set up within their territories one or more national services for the protection of the cultural heritage⁶;
- 460 (3) to introduce a system of export certificates authorising the export of cultural property⁷ with sanctions for the infringement thereof⁸;
- 461 (4) to prevent museums and similar institutions within their territories from acquiring cultural property originating in another party state which has been illegally exported; to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another such state, and to take appropriate steps to recover and return any such imported property⁹;
- 462 (5) to prevent transfers of ownership of cultural property likely to promote the illicit import or export of such property¹⁰;
- 463 (6) to restrict movement of cultural property illegally removed from any state party to the convention and to oblige antique dealers, subject to penal or administrative sanctions, to maintain a register of each item of cultural property sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject¹¹;
- 464 (7) to endeavour by educational means to create and develop in the public mind a realisation of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports¹².

Any state party to the convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other state parties who are affected; and, in these circumstances, the state parties undertake to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned¹³.

The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power is regarded as illicit¹⁴. States party to the convention must respect the cultural heritage within the territories for the international relations of which they are responsible, and must take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories¹⁵. In order to prevent illicit export and to meet the obligations arising from the convention, each state party to the convention should, as far as it is able, provide the national

services responsible for the protection of its cultural heritage with an adequate budget and, if necessary, should set up a fund for this purpose¹⁶.

1 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970).

2 'Cultural property' means property which, on religious or secular grounds, is specifically designated by each state party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- 70 (1) rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- 71 (2) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- 72 (3) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- 73 (4) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- 74 (5) antiquities more than 100 years old, such as inscriptions, coins and engraved seals;
- 75 (6) objects of ethnological interest;
- 76 (7) property of artistic interest, such as: (a) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); (b) original works of statuary art and sculpture in any material; (c) original engravings, prints and lithographs; (d) original artistic assemblages and montages in any material;
- 77 (8) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc) singly or in collections;
- 78 (9) postage, revenue and similar stamps, singly or in collections;
- 79 (10) archives, including sound, photographic and cinematographic archives;
- 80 (11) articles of furniture more than 100 years old and old musical instruments: art 1.

For the purposes of the Convention property which belongs to the following categories forms part of the cultural heritage of each state: (i) cultural property created by the individual or collective genius of nationals of the state concerned, and cultural property of importance to the state concerned created within the territory of that state by foreign nationals or stateless persons resident within such territory; (ii) cultural property found within the national territory; (iii) cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property; (iv) cultural property which has been the subject of a freely agreed exchange; (v) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property: art 4.

3 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) art 3.

4 The United Kingdom deposited an instrument of acceptance in respect of the convention on 1 August 2002. This followed a recommendation by the Ministerial Advisory Panel on the Illicit Trade in Cultural Objects (ITAP) established by the Secretary of State for Culture, Media and Sport. ITAP considered that the current state of UK law and practice would enable the UK to implement the convention without new legislation, a position with which the government agreed. However, the government also agreed to a recommendation by ITAP that there be created a new criminal offence of trading in illegally removed cultural objects, accepting that this offence would complement its treaty obligations and reinforce its implementation in the UK: see the Dealing in Cultural Objects (Offences) Act 2003 Explanatory Notes paras 3-6. As to the Dealing in Cultural Objects (Offences) Act 2003 see PARA 1100.

5 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) art 2.

6 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) art 5.

7 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) art 6.

8 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) art 8.

9 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) arts 7, 8.

10 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) art 13.

11 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) art 10(a).

12 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) art 10(b).

13 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) art 9.

14 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) art 11.

15 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) art 12.

16 See the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14 November 1970) art 14.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(4) ILLICIT TRADE/(ii) Return of Cultural Objects Unlawfully Removed from Member States/1095. Introduction.

(ii) Return of Cultural Objects Unlawfully Removed from Member States

1095. Introduction.

Arrangements have been introduced enabling member states of the European Union (EU) to secure the return¹ to their territory of cultural objects which are, or may be, classified as national treasures and which have been unlawfully removed². For these purposes, 'cultural object' means an object which:

- 465 (1) is classified, before or after its unlawful removal from the territory of a member state, among the national treasures possessing artistic, historic or archaeological value³; and
- 466 (2) belongs to one of the categories listed in the Annex to the Directive⁴ or does not belong to one of those categories but forms an integral part of public collections⁵ listed in the inventories of museums, archives or libraries' conservation collection or the inventories of ecclesiastical institutions⁶.

Cultural objects which have been unlawfully removed after 1 January 1993 must be returned in the prescribed circumstances in accordance with the prescribed procedure⁷. Each member state may apply the arrangements provided for by the Directive to requests for the return of cultural objects unlawfully removed from the territory of other member states prior to that date⁸.

Ownership of a cultural object after return is governed by the law of the member state which has requested its return⁹. The provisions of the Directive are without prejudice to any civil or criminal proceedings that may be brought, under the national laws of the member states, by the requesting member state and/or the owner of a cultural object that has been stolen¹⁰.

1 'Return' means the physical return of the cultural object to the territory of the requesting member state; and 'requesting member state' means the member state from whose territory the cultural object has been unlawfully removed: EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) art 1(3), (5); Return of Cultural Objects Regulations 1994, SI 1994/501, reg 2(1), (2). 'Unlawfully removed from the territory of a member state' means removed from its territory in breach of its rules on the protection of national treasures or in breach of EC Council Regulation 3911/92 (OJ L395, 31.12.92, p 1) (repealed) (see now EC Council Regulation 116/2009 (OJ L39, 10.2.2009, p 1); and PARA 1092) or not returned at the end of a period of lawful temporary removal or any breach of another condition governing such temporary removal: EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) art 1(2); Return of Cultural Objects Regulations 1994, SI 1994/501, reg 2(1), (2).

2 See EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) (amended by European Parliament and Council Directive 96/100 (OJ L60, 1.3.1997, p 59); European Parliament and Council Directive 2001/38 (OJ L187, 10.7.2001, p 43)). The Return of Cultural Objects Regulations 1994, SI 1994/501, have been made for the purpose of implementing the Directive: see PARA 1096 et seq.

3 It under national legislation or administrative procedures within the meaning of the Treaty on the Functioning of the European Union (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 36: EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) art 1(1). The Treaty was formerly known as the Treaty Establishing the European Community; it was renamed by the Treaty of Lisbon Amending the Treaty Establishing the European Union and the Treaty Establishing the European Community (Lisbon, 13 December 2007, ECS 13 (2007); Cm 7294) and its provisions renumbered by that Treaty and previously by the Treaty of Amsterdam amending the

Treaty on European Union, the Treaties establishing the European Communities and Related Acts (OJ C340, 10.11.1997, p 1).

4 Those categories are:

- 81 (1) archaeological objects more than 100 years old which are the products of land or underwater excavations and finds, archaeological sites or archaeological collections, whatever their financial value;
- 82 (2) elements forming an integral part of artistic, historical or religious monuments which have been dismembered, more than 100 years old, whatever their financial value;
- 83 (3) pictures and paintings, other than those included in category (3A) or (4), executed entirely by hand on any material and in any medium whose financial value corresponds to or exceeds 150,000 Euro;
- 84 (3A) water-colours, gouaches and pastels executed entirely by hand on any material whose financial value corresponds to or exceeds 30,000 Euro;
- 85 (4) mosaics in any material executed entirely by hand, other than those falling in category (1) or (2), and drawings in any medium executed entirely by hand on any material whose financial value corresponds to or exceeds 15,000 Euro;
- 86 (5) original engravings, prints, serigraphs and lithographs with their respective places and originators, where their financial value corresponds to or exceeds 15,000 Euro;
- 87 (6) original sculptures or statuary and copies produced by the same process as the original other than those within category (1), where their financial value corresponds to or exceeds 50,000 Euro;
- 88 (7) photographs, films and negatives thereof, where their financial value corresponds to or exceeds 15,000 Euro;
- 89 (8) incunabula and manuscripts, including maps and musical scores, singly or in collections, whatever their value;
- 90 (9) books more than 100 years old, singly or in collections, where their financial value corresponds to or exceeds 50,000 Euro;
- 91 (10) printed maps more than 200 years old, where their financial value corresponds to or exceeds 15,000 Euro;
- 92 (11) archives and any elements thereof, of any kind, on any medium comprising elements more than 50 years old, whatever their financial value;
- 93 (12) collections and specimens from zoological, botanical, mineralogical or anatomical collections, and collections of historical, palaeontological, ethnographic or numismatic interest, where their financial value corresponds to or exceeds 50,000 Euro;
- 94 (13) means of transport more than 75 years old, where their financial value corresponds to or exceeds 50,000 Euro; and
- 95 (14) any other antique item not included in the above categories and more than 50 years old, where its financial value corresponds to or exceeds 50,000 Euro: EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) Annex (as amended: see note 2); Return of Cultural Objects Regulations 1994, SI 1994/501, reg 2(3), Schedule (both amended by SI 2001/3972).

In the case of items falling within categories (3), (3A), (4)-(8), they must be more than 50 years old and not belonging to their originators: EC Council Directive 93/7 Annex note (1). In category (12) 'collection' means as defined in Case 252/84 *Collector Guns GmbH & Co. KG v Hauptzollamt Koblenz*, ECJ as follows: 'collectors' pieces within the meaning of Heading No 99.05 of the Common Customs Tariff are articles which possess the requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value: see EC Council Directive 93/7 Annex note (2). The assessment of whether or not the conditions relating to financial value are fulfilled must be made when return is requested; and the financial value is that of the object in the requested member state. For the member states which do not have the euro as their currency, the values expressed in euro in the Annex must be converted and expressed in national currencies at the rate of exchange on 31 December 2001 published in the Official Journal of the European Communities: see Annex Pt B (amended by European Parliament and Council Directive 2001/38 (OJ

L187, 10.7.2001, p 43)); Return of Cultural Objects Regulations 1994, SI 1994/501, reg 2(3) (as so amended). 'Requested member state' means the member state in whose territory a cultural object unlawfully removed from the territory of another member state is located: EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) art 1(4); Return of Cultural Objects Regulations 1994, SI 1994/501, reg 2(1), (2). Each member state may extend its obligation to return cultural objects to cover categories of objects other than those listed in categories (1)-(3), (3A), (4)-(14): EC Council Directive 93/7 art 14(1).

5 'Public collections' means collections which are the property of a member state, local or regional authority within a member state or an institution situated in the territory of a member state and defined as public in accordance with the legislation of that member state, the institution being the property of, or significantly financed by, that member state or a local or regional authority: EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) art 1(1); Return of Cultural Objects Regulations 1994, SI 1994/501, reg 2(1), (2).

6 EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) art 1(1).

7 See EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) arts 2, 13; the Return of Cultural Objects Regulations 1994, SI 1994/501; and PARA 1096 et seq.

8 EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) art 14(2).

9 EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) art 12.

10 EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) art 15. As to the offence of dealing in tainted cultural objects see PARA 1100.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(4) ILLICIT TRADE/(ii) Return of Cultural Objects Unlawfully Removed from Member States/1096. Investigation by the Secretary of State.

1096. Investigation by the Secretary of State.

Upon application by a member state¹, the Secretary of State² must seek a specified cultural object³ which has been unlawfully removed from its territory⁴, and must take steps to identify any possessor or holder⁵. The Secretary of State is not, however, under any duty by virtue of this obligation unless the application includes all information needed to facilitate the search and, in particular, information with reference to the actual or presumed location of the object⁶.

The Secretary of State must notify the member state concerned, where a cultural object is found in the United Kingdom⁷, whether as the result of such a search or not, and there are reasonable grounds for believing that it has been unlawfully removed from the territory of that state⁸. The Secretary of State must:

- 467 (1) take steps to enable the competent authorities of the member state concerned to check that the object in question is a cultural object⁹;
- 468 (2) take any necessary measures, in co-operation with the member state concerned, for the physical preservation of an object which appears as a result of such a check to be a cultural object¹⁰;
- 469 (3) prevent, by the necessary interim measures, any action to evade the return procedure¹¹.

The High Court¹² has power, on an application made by the Secretary of State¹³ for the purpose of performing his functions under these provisions, to make such order as it considers appropriate¹⁴:

- 470 (a) to enable a check to be made under head (1) above¹⁵;
- 471 (b) for the physical preservation of an object which appears as a result of such a check to be a cultural object¹⁶;
- 472 (c) to prevent any action to avoid the return procedure¹⁷.

1 As to the meaning of 'member state' see the Interpretation Act 1978 s 5, Sch 1; European Communities Act 1972 s 1(2), Sch 1 Pt II.

2 As to the Secretary of State see PARA 802.

3 The Return of Cultural Objects Regulations 1994, SI 1994/501, apply only to cultural objects unlawfully removed from the territory of a member state on or after 1 January 1993: Return of Cultural Objects Regulations 1994, SI 1994/501, reg 1(3). As to the meaning of 'cultural object' see PARA 1095. As to the meaning of 'unlawfully removed from the territory of a member state' see PARA 1095 note 1. As to the lawful export of cultural objects see PARA 1092.

4 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 3(1)(a).

5 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 3(1)(b). 'Possessor' means the person physically holding the cultural object on his own account; and 'holder' means the person physically holding it for third parties: EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) art 1(6), (7); Return of Cultural Objects Regulations 1994, SI 1994/501, reg 2(1), (2).

6 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 3(2).

7 As to the meaning of 'United Kingdom' see PARA 804 note 2.

8 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 3(3).

9 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 3(4)(a). If the check for which reg 3(4)(a) provides is not made within two months of the notification under reg 3(3) (see the text to notes 7-8), the Secretary of State ceases to be under any duty by virtue of reg 3(4): reg 3(5). As to the meaning of 'month' see PARA 803 note 11.

10 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 3(4)(b). Expenses incurred in taking necessary measures for the preservation of a cultural object must be borne by the member state which made the application as respects the object or (where no such application is made) which, having been notified under reg 3(3) (see the text to notes 7-8) as respects the object, seeks its return (whether by proceedings under reg 6 (see PARA 1098) or otherwise): reg 3(6).

11 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 3(4)(c). The return procedure is that under the Return of Cultural Objects Regulations 1994, SI 1994/501: see reg 3(4)(c).

12 As to the High Court of Justice in England and Wales see **COURTS** vol 10 (Reissue) PARA 602 et seq.

13 An application for an order may be made ex parte (Return of Cultural Objects Regulations 1994, SI 1994/501, reg 4(2)(a)) and must be supported by an affidavit (reg 4(2)(b)).

14 Return of Cultural Objects Regulations 1994, SI 1994/501, regs 2(4)(a), 4(1). Without prejudice to the generality of reg 4(1), the power to make such an order includes power to authorise the Secretary of State's officer to take possession of the object (reg 4(3)(a)) and to hand the object over to the custody of a person or institution specified in the order (reg 4(3)(b)). As to the meaning of 'person' see PARA 803 note 16.

15 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 4(1)(a).

16 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 4(1)(b).

17 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 4(1)(c).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(4) ILLICIT TRADE/(ii) Return of Cultural Objects Unlawfully Removed from Member States/1097. Powers of entry and search.

1097. Powers of entry and search.

If on an application made by the Secretary of State¹ for the purpose of performing his functions in relation to the return of cultural objects² the High Court³ is satisfied:

- 473 (1) that there are reasonable grounds for believing that a cultural object has been unlawfully removed from the territory of a member state⁴, and that it is on premises specified in the application⁵; and
- 474 (2) that any of the specified conditions applies⁶,

the court may make an order authorising an officer of the Secretary of State to enter and search the premises and such an order may authorise other persons to accompany that officer⁷. The specified conditions are that admission to the premises has been refused, or that the case is one of urgency, or that an application for admission to the premises would defeat the object of the entry⁸.

An order so made must authorise an entry on one occasion only and must identify, so far as practicable, the cultural object to be sought⁹ and must specify: (a) the name of the officer and of any other person authorised to accompany him¹⁰; (b) the date on which it is made¹¹; (c) that it is made under these provisions¹²; and (d) the premises to be searched¹³. Entry and search under an order must be within one month¹⁴ from the date of the order and must be at a reasonable hour unless it appears to the officer executing it that the object of the entry may be defeated on an entry at a reasonable hour¹⁵. A search under such an order may only be a search to the extent required for the purpose for which the order was made¹⁶.

1 An application may be made ex parte (Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(3)(a)), must be supported by an affidavit (reg 5(3)(b)), and must specify the premises which it is desired to enter and search, and identify, so far as practicable, the cultural object to be sought (reg 5(3)(c)). As to the Secretary of State see PARA 802. As to the meaning of 'cultural object' see PARA 1095.

2 Ie the functions of the Secretary of State under the Return of Cultural Objects Regulations 1994, SI 1994/501, reg 3: see PARA 1096. As to the meaning of 'return' see PARA 1095 note 1.

3 See the Return of Cultural Objects Regulations 1994, SI 1994/501, reg 2(4)(a). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

4 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(1)(a)(i). As to the meaning of 'unlawfully removed from the territory of a member state' see PARA 1095 note 1.

5 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(1)(a)(ii).

6 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(1)(b).

7 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(1). As to the meaning of 'person' see PARA 803 note 16.

8 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(2).

9 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(4)(b).

10 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(4)(a)(i).

11 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(4)(a)(ii).

- 12 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(4)(a)(iii).
- 13 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(4)(a)(iv).
- 14 As to the meaning of 'month' see PARA 803 note 11.
- 15 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(5). Where the officer seeks to execute such an order he must, if requested by the occupier or other person appearing to him to be in charge of the premises, identify himself and produce the order to that person: reg 5(6).
- 16 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 5(7).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(4) ILLICIT TRADE/(ii) Return of Cultural Objects Unlawfully Removed from Member States/1098. Member state's right to take proceedings.

1098. Member state's right to take proceedings.

A member state¹ has a right of action against the possessor² or, failing him, the holder³, for the return⁴ of a cultural object⁵ which has been unlawfully removed from its territory⁶. Proceedings under these provisions may not, however, be brought if removal from the national territory of the member state is no longer unlawful at the time when they are to be initiated⁷.

Proceedings must be brought in the High Court⁸. The document initiating the proceedings must be accompanied by a document describing the object covered by the request and stating that it is a cultural object⁹, and a declaration by the competent authorities of the member state that the object has been unlawfully removed from its territory¹⁰. The court must order the return of the object where it finds it to be the cultural object covered by the request¹¹ and to have been removed unlawfully from the national territory of the member state¹². However, the court must not make an order for the return of the object if it is satisfied that: (1) the proceedings were brought more than one year after the member state became aware of the location of the cultural object and of the identity of its possessor or holder¹³; or (2) they were brought after the expiry of the special limitation period¹⁴.

Expenses incurred in implementing an order for the return of a cultural object must be borne by the requesting member state¹⁵.

1 As to the meaning of 'member state' see the Interpretation Act 1978 s 5, Sch 1; European Communities Act 1972 s 1(2), Sch 1 Pt II.

2 As to the meaning of 'possessor' see PARA 1096 note 5.

3 As to the meaning of 'holder' see PARA 1096 note 5.

4 As to the meaning of 'return' see PARA 1095 note 1.

5 As to the meaning of 'cultural object' see PARA 1095.

6 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(1). As to the meaning of 'unlawfully removed from the territory of a member state' see PARA 1095 note 1.

7 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(2).

8 See the Return of Cultural Objects Regulations 1994, SI 1994/501, regs 2(4)(a), 6(3).

9 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(4)(a).

10 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(4)(b).

11 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(5)(a).

12 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(5)(b). As to orders for compensation see PARA 1099.

13 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(6)(a).

14 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(6)(b). The special limitation period in the case of objects forming part of public collections, referred to in EC Council Directive 93/7 (OJ L74, 27.3.93, p 74) art 1(1) (see PARA 1095), and of ecclesiastical goods subject to special protection arrangements under the national law of the member state, is the period of 75 years commencing with the date on which the object was unlawfully removed from the territory of the requesting member state: Return of Cultural Objects Regulations

1994, SI 1994/501, reg 6(7). In any other case the special limitation period is the period of 30 years commencing with that date: reg 6(8). These rules have effect in place of any other rule as to the limitation of actions: reg 6(9). As to the meaning of 'requesting member state' see PARA 1095 note 1. As to limitation of actions generally see **LIMITATION PERIODS** vol 68 (2008) PARA 901 et seq.

15 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 8.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(4) ILLICIT TRADE/(ii) Return of Cultural Objects Unlawfully Removed from Member States/1099. Order for compensation.

1099. Order for compensation.

Where return¹ of a cultural object² is ordered³, the High Court⁴ must order the requesting member state⁵ to pay the possessor⁶ such compensation as the court deems fair according to the circumstances of the case⁷. However, the court must not order the payment of compensation unless it is satisfied that the possessor exercised due care and attention in acquiring the object⁸.

1 As to the meaning of 'return' see PARA 1095 note 1.

2 As to the meaning of 'cultural object' see PARA 1095.

3 As to orders for the return of cultural objects see PARA 1098.

4 See the Return of Cultural Objects Regulations 1994, SI 1994/501, reg 2(4)(a). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

5 As to the meaning of 'requesting member state' see PARA 1095 note 1.

6 As to the meaning of 'possessor' see PARA 1096 note 5.

7 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 7(1).

8 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 7(2). In the application of reg 7(2) where there has been a donation or succession, the possessor must not be in a more favourable position than the person from whom he acquired the object upon the donation or succession: reg 7(3). As to the meaning of 'person' see PARA 803 note 16.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(4) ILLICIT TRADE/(iii) Dealing in Tainted Cultural Objects/1100. Offence of dealing in tainted cultural objects.

(iii) Dealing in Tainted Cultural Objects

1100. Offence of dealing in tainted cultural objects.

A person¹ is guilty of an offence if he dishonestly deals in² a cultural object³ that is tainted, knowing or believing that the object is tainted⁴; and for these purposes, it is immaterial whether he knows or believes that the object is a cultural object⁵.

A cultural object is tainted if, after 30 December 2003⁶, a person:

- 475 (1) removes the object (a) from a building or structure of historical, architectural or archaeological interest where the object has at any time formed part of the building or structure⁷, or (b) from a monument⁸ of such interest⁹; or
- 476 (2) excavates the object¹⁰, and

the removal or excavation constitutes an offence¹¹. For these purposes, it is immaterial whether: (i) the removal or excavation was done in the United Kingdom or elsewhere¹²; (ii) the offence is committed under the law of a part of the United Kingdom or under the law of any other country or territory¹³; (iii) a building, structure or work is above or below the surface of the land¹⁴; (iv) a site is above or below water¹⁵.

If an offence of dealing in tainted cultural objects¹⁶ committed by a body corporate is proved to have been committed with the consent or connivance of an officer¹⁷, or to be attributable to any neglect on his part¹⁸, he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly¹⁹.

Proceedings for an offence relating to the dealing in a tainted cultural object²⁰ may be instituted by the Director of Revenue and Customs Prosecutions or by order of the Commissioners for Her Majesty's Revenue and Customs²¹ if it appears to the director or to the commissioners that the offence has involved the importation or exportation of such an object²². Where the Commissioners investigate, or propose to investigate, any matter with a view to determining:

- 477 (A) whether there are grounds for believing that a person has committed an offence which relates to the dealing in a tainted cultural object and which involves the importation or exportation of such an object²³, or
- 478 (B) whether a person should be prosecuted for such an offence²⁴,

the matter is to be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979²⁵.

1 As to the meaning of 'person' see PARA 803 note 16.

2 For these purposes (see the Dealing in Cultural Objects (Offences) Act 2003 s 3(5)), a person deals in an object if (and only if) he: (1) acquires, disposes of, imports or exports it (s 3(1)(a)); (2) agrees with another to do an act mentioned in head (1) (s 3(1)(b)); or (3) makes arrangements under which another person does such an act or under which another person agrees with a third person to do such an act (s 3(1)(c)). 'Acquires' means buys, hires, borrows or accepts: s 3(2). 'Disposes of' means sells, lets on hire, lends or gives: s 3(3). In relation to agreeing or arranging to do an act, it is immaterial whether the act is agreed or arranged to take place in the United Kingdom or elsewhere: s 3(4). As to the meaning of 'United Kingdom' see PARA 804 note 2.

3 'Cultural object' means an object of historical, architectural or archaeological interest: Dealing in Cultural Objects (Offences) Act 2003 s 2(1).

4 Dealing in Cultural Objects (Offences) Act 2003 s 1(1). A person guilty of the offence is liable: (1) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both) (s 1(3)(a)); (2) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both) (s 1(3)(b)). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. The Department for Culture, Media and Sport has produced guidance on this offence: see *Dealing in Tainted Cultural Objects: Guidance on the Dealing in Cultural Objects (Offences) Act 2003* (Department for Culture, Media and Sport January 2004). A copy of the guidance is available on the DCMS website at www.culture.gov.uk.

5 Dealing in Cultural Objects (Offences) Act 2003 s 1(2).

6 Ie the date of the commencement of the Dealing in Cultural Objects (Offences) Act 2003: see ss 2(2), 6(2).

7 See the Dealing in Cultural Objects (Offences) Act 2003 s 2(2)(a), (4)(a).

8 For these purposes, 'monument' means: (1) any work, cave or excavation; (2) any site comprising the remains of any building or structure or of any work, cave or excavation; (3) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure, or part of any such thing: Dealing in Cultural Objects (Offences) Act 2003 s 2(5)(a)-(c), (8). 'Remains' includes any trace or sign of the previous existence of the thing in question: s 2(6), (8).

9 See the Dealing in Cultural Objects (Offences) Act 2003 s 2(2)(a), (4)(b).

10 See the Dealing in Cultural Objects (Offences) Act 2003 s 2(2)(a).

11 Dealing in Cultural Objects (Offences) Act 2003 s 2(2)(b).

12 Dealing in Cultural Objects (Offences) Act 2003 s 2(3)(a).

13 Dealing in Cultural Objects (Offences) Act 2003 s 2(3)(b).

14 Dealing in Cultural Objects (Offences) Act 2003 s 2(7)(a). As to the meaning of 'land' see PARA 804 note 30.

15 Dealing in Cultural Objects (Offences) Act 2003 s 2(7)(b).

16 Ie an offence under the Dealing in Cultural Objects (Offences) Act 2003 s 1: see the text to notes 1-5.

17 Dealing in Cultural Objects (Offences) Act 2003 s 5(1)(a). 'Officer', in relation to a body corporate, means (1) a director, manager, secretary or other similar officer of the body (s 5(2)(a)); (2) a person purporting to act in any such capacity (s 5(2)(b)). If the affairs of a body corporate are managed by its members, s 5(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body: s 5(3).

18 Dealing in Cultural Objects (Offences) Act 2003 s 5(1)(b).

19 Dealing in Cultural Objects (Offences) Act 2003 s 5(1).

20 An offence relates to the dealing in a tainted cultural object if it is (1) an offence under the Dealing in Cultural Objects (Offences) Act 2003 s 1 (see the text to notes 1-5) (s 4(2)(a)); or (2) an offence of inciting the commission of, or attempting or conspiring to commit, such an offence (s 4(2)(b)). The reference in head (2) above to (or to conduct amounting to) the common law offence of inciting the commission of another offence, has effect as a reference to (or to conduct amounting to) the offences under the Serious Crime Act 2007 Pt 2 (ss 44-67) (encouraging or assisting crime: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**): see s 63(1), Sch 6 Pt 1 para 45.

21 As to the Director of Revenue and Customs Prosecutions see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1192. As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

22 Dealing in Cultural Objects (Offences) Act 2003 s 4(1) (s 4(1), (3) amended by the Commissioners for Revenue and Customs Act 2005, s 50(6), Sch 4, para 128). Proceedings for an offence which are instituted by order of the commissioners are to be commenced in the name of an officer of Revenue and Customs, but may be continued by another officer: Dealing in Cultural Objects (Offences) Act 2003 s 4(3) (as so amended). 'Officer'

of Revenue and Customs' has the meaning given by the Commissioners for Revenue and Customs Act 2005 s 2(1) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901): Interpretation Act 1978 s 5, Sch 1 (definition added by the Commissioners for Revenue and Customs Act 2005 s 2(7)). Nothing in the Dealing in Cultural Objects (Offences) Act 2003 s 4 affects any powers of any person (including any officer) apart from that section: s 4(5).

23 Dealing in Cultural Objects (Offences) Act 2003 s 4(4)(a).

24 Dealing in Cultural Objects (Offences) Act 2003 s 4(4)(b).

25 Dealing in Cultural Objects (Offences) Act 2003 s 4(4) (amended by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4, para 128). 'Assigned matter' means any matter in relation to which the Commissioners, or officers of Revenue and Customs, have a power or duty: see the Customs and Excise Management Act 1979 s 1(1) (definition substituted by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 paras 20, 22(a)); and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 904.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(4) ILLICIT TRADE/(iii) Dealing in Tainted Cultural Objects/1101. Handling stolen cultural objects.

1101. Handling stolen cultural objects.

A person may commit an offence under the Theft Act 1968 of handling stolen goods¹ if he handles cultural objects which have been stolen from a foreign country in breach of the laws of that country².

1 See an offence under the Theft Act 1968 s 22: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 302.

2 See *R v Tokeley-Parry* [1999] Crim LR 578.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(4) ILLICIT TRADE/(iv) Nazi Spoliation/1102. Nazi spoliation and the Spoliation Advisory Panel.

(iv) Nazi Spoliation

1102. Nazi spoliation and the Spoliation Advisory Panel.

The term 'spoliation' refers to the systematic programme for the forced transfer of works of art and other cultural objects instigated by the Nazis between 1933, when they came to power, and the end of World War II in 1945¹.

In 1943 the United Kingdom and 16 other governments, in recognition of this situation, issued a declaration reserving the rights of governments to declare invalid any transfers of, or dealings in property subject to such spoliation². In 1998 the Washington Conference on Holocaust-Era Assets endorsed certain principles for dealing with Nazi spoliated art³, and in 1999 the Parliamentary Assembly of the Council of Europe passed a resolution calling for the restitution of looted Jewish cultural property in Europe⁴. Following on from the Washington conference, the Vilnius International Forum on Holocaust Era Looted Cultural Assets in 2000 agreed to a declaration asking all governments to undertake every reasonable effort to achieve the restitution of spoliated cultural assets to the original owners or their heirs⁵; and subsequently a further such declaration was issued in 2009 at the Holocaust Era Assets Conference in the Czech Republic⁶.

The Spoliation Advisory Panel was first appointed in 2000⁷. The task of the Panel is to consider claims from anyone (or from any one or more of their heirs), who lost possession of a cultural object during the Nazi era (1933-1945), where such object is now in the possession of a United Kingdom⁸ national collection or in the possession of another UK museum or gallery established for the public benefit⁹. The Panel must advise the claimant and the institution on what would be appropriate action to take in response to such a claim; and is also available to advise about any claim for an item in a private collection at the joint request of the claimant and the owner¹⁰. In any case where the Panel considers it appropriate, it may also advise the Secretary of State on what action should be taken in relation to general issues raised by the claim, and/or where it considers that the circumstances of the particular claim warrant it, on what action should be taken in relation to that claim¹¹. In performing these functions, the Panel's paramount purpose is to achieve a solution which is fair and just both to the claimant and to the institution¹².

The Panel performs its functions and conducts its proceedings in strictest confidence¹³. It is not the function of the Panel to determine legal rights¹⁴; the Panel's proceedings are an alternative to litigation¹⁵. Any recommendation made by the Panel is not intended to be legally binding on the claimant, the institution or the Secretary of State¹⁶, but if the claimant accepts the recommendation of the Panel and that recommendation is implemented, the claimant is expected to accept the implementation in full and final settlement of his claim¹⁷. If the Panel upholds the claim in principle, it may recommend either:

- 479 (1) the return of the object to the claimant; or
- 480 (2) the payment of compensation to the claimant, the amount being in the discretion of the Panel having regard to all relevant circumstances including the current market value, but not tied to that current market value; or
- 481 (3) an ex gratia payment to the claimant; or
- 482 (4) the display alongside the object of an account of its history and provenance during and since the Nazi era, with special reference to the claimant's interest therein; and

483 (5) that negotiations should be conducted with the successful claimant in order to implement such a recommendation as expeditiously as possible¹⁸.

The panel publishes reports in respect of the claims considered by it¹⁹.

1 For a discussion of international action relating to Nazi spoliation see *Restitution of Objects Spoliated in the Nazi-Era: A Consultation Document* (Department for Culture, Media and Sport, July 2006). A copy of the document is available on the DCMS website at www.culture.gov.uk.

2 See the Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control (London, January 5 1943).

3 See the Statement of Principles of the Washington Conference on Holocaust-Era Assets (Washington DC, December 3 1998).

4 See Council of Europe Resolution 1205 on Looted Jewish Cultural Property (1999).

5 See the Declaration of the Vilnius International Forum on Holocaust Era Looted Cultural Assets (Vilnius, 5 October 2000).

6 See the Declaration of the Holocaust Era Assets Conference (Terezin, 30 June 2009).

7 The members of the Spoliation Advisory Panel are appointed by the Secretary of State on such terms and conditions as he thinks fit; and the Secretary of State must appoint one member as chairman of the Panel: *Spoliation Advisory Panel Constitution and Terms of Reference* (Department for Culture, Media and Sport) para 1. A copy of the constitution and terms of reference of the panel is available on the DCMS website at www.culture.gov.uk. As to the Secretary of State see PARA 802.

8 As to the meaning of 'United Kingdom' see PARA 804 note 2.

9 *Spoliation Advisory Panel Constitution and Terms of Reference* (Department for Culture, Media and Sport) para 3. As to the procedure of the Panel see the *Spoliation Advisory Panel Rules of Procedure* (Department for Culture, Media and Sport). See also *Spoliation Advisory Panel: Functions and Procedures of the Secretariat & Legal Advisers*. Copies of both documents are available on the DCMS website at www.culture.gov.uk.

10 *Spoliation Advisory Panel Constitution and Terms of Reference* (Department for Culture, Media and Sport) para 3.

11 *Spoliation Advisory Panel Constitution and Terms of Reference* (Department for Culture, Media and Sport) para 4. When so advising the Secretary of State, the Panel is free to recommend any action which it considers appropriate, and in particular may direct the attention of the Secretary of State to the need for legislation to alter the powers and duties of any institution: see para 14.

12 *Spoliation Advisory Panel Constitution and Terms of Reference* (Department for Culture, Media and Sport) para 11.

13 See the *Spoliation Advisory Panel Constitution and Terms of Reference* (Department for Culture, Media and Sport) para 9.

14 See the *Spoliation Advisory Panel Constitution and Terms of Reference* (Department for Culture, Media and Sport) para 5.

15 See the *Spoliation Advisory Panel Constitution and Terms of Reference* (Department for Culture, Media and Sport) para 6.

16 *Spoliation Advisory Panel Constitution and Terms of Reference* (Department for Culture, Media and Sport) para 7.

17 *Spoliation Advisory Panel Constitution and Terms of Reference* (Department for Culture, Media and Sport) para 8.

18 *Spoliation Advisory Panel Constitution and Terms of Reference* (Department for Culture, Media and Sport) para 13.

19 See eg the *Report of the Spoliation Advisory Panel in respect of 8 drawings now in the possession of the Samuel Courtauld Trust*. Copies of the reports are available on the DCMS website at www.culture.gov.uk.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/4. MOVEABLE CULTURAL HERITAGE/(4) ILLICIT TRADE/(iv) Nazi Spoliation/1103. Holocaust (Return of Cultural Objects) Act 2009.

1103. Holocaust (Return of Cultural Objects) Act 2009.

The Holocaust (Return of Cultural Objects) Act 2009 confers power to return certain cultural objects on grounds relating to events occurring during the Nazi era¹.

A body to which the Act applies² may transfer an object from its collections if the following conditions are met³. The conditions are (1) that the Advisory Panel has recommended the transfer⁴; and (2) that the Secretary of State has approved the Advisory Panel's recommendation⁵. This power is an additional power⁶, and does not affect any trust or condition subject to which any object is held⁷.

The Advisory Panel is a panel for the time being designated by the Secretary of State for these purposes⁸. The Secretary of State may designate a panel only if the panel's functions consist of the consideration of claims which (a) are made in respect of objects⁹; and (b) relate to events occurring during the Nazi era¹⁰.

The Holocaust (Return of Cultural Objects) Act 2009 expires at the end of the period of ten years beginning with 12 November 2009¹¹.

1 See the Holocaust (Return of Cultural Objects) Act 2009, Preliminaries. The Act extends to England and Wales, and Scotland: s 4(2). The Act came into force on 13 January 2010: see the Holocaust (Return of Cultural Objects) Act 2009 (Commencement) Order 2010, SI 2010/50, art 2. The Act is subject to a sunset clause: see the text to note 11.

2 The Act applies to the following bodies: the board of trustees of the Armouries (see PARA 876); the British Library board (see PARA 908); the trustees of the British Museum (see PARA 827); the trustees of the Imperial War Museum (see PARA 844); the board of trustees for the National Galleries of Scotland; the board of trustees of the National Gallery (see PARA 836); the trustees of the National Library of Scotland; the trustees of the National Maritime Museum (see PARA 850); the board of trustees of the National Museums and Galleries on Merseyside; the board of trustees of the National Museums of Scotland; the board of trustees of the National Portrait Gallery (see PARA 836); the trustees of the Natural History Museum (see PARA 826); the board of trustees of the Royal Botanic Gardens, Kew (see PARA 883); the board of trustees of the Science Museum (see PARA 870); the board of trustees of the Tate Gallery (see PARA 836); the board of trustees of the Victoria and Albert Museum (see PARA 864); the board of trustees of the Wallace Collection (see PARA 836): Holocaust (Return of Cultural Objects) Act 2009 s 1.

3 Holocaust (Return of Cultural Objects) Act 2009 s 2(1).

4 Holocaust (Return of Cultural Objects) Act 2009 s 2(2).

5 Holocaust (Return of Cultural Objects) Act 2009 s 2(3). The Secretary of State may approve a recommendation for the transfer of an object from the collections of a Scottish body only with the consent of the Scottish Ministers: s 2(4). 'Scottish body' means the Board of Trustees for the National Galleries of Scotland, the Trustees of the National Library of Scotland, and the Board of Trustees of the National Museums of Scotland: s 2(5). As to the Secretary of State see PARA 802 note 2. As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 Holocaust (Return of Cultural Objects) Act 2009 s 2(7).

7 Holocaust (Return of Cultural Objects) Act 2009 s 2(6).

8 Holocaust (Return of Cultural Objects) Act 2009 s 3(1).

9 Holocaust (Return of Cultural Objects) Act 2009 s 3(2)(a).

10 Holocaust (Return of Cultural Objects) Act 2009 s 3(2)(b). 'Nazi era' means the period beginning with 1 January 1933 and ending with 31 December 1945: s 3(3).

11 See the Holocaust (Return of Cultural Objects) Act 2009 s 4(7). 12 November 2009 is the date on which the Act received royal assent.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/5. GENERAL PROVISIONS/(1) CULTURAL HERITAGE AND ARMED CONFLICT/1104. Destruction of cultural heritage as a war crime.

5. GENERAL PROVISIONS

(1) CULTURAL HERITAGE AND ARMED CONFLICT

1104. Destruction of cultural heritage as a war crime.

The International Criminal Court (the 'ICC')¹ has jurisdiction, inter alia, in respect of war crimes² and this is the case in particular when these are committed as part of a plan or policy or as part of a large-scale commission of such crimes³. For the purpose of the Statute establishing the court, 'war crimes' means other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, including intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, and historic monuments, provided they are not military objectives⁴.

The International Criminal Court Act 2001 incorporates the offences in the Statute establishing the ICC⁵ into the law of the United Kingdom⁶ so that United Kingdom authorities will be in a position to investigate and prosecute any ICC crimes committed in the UK, or committed overseas by a UK national, a UK resident or a person subject to UK service jurisdiction, and to make provision, where necessary, to enable the UK to meet its obligations under the ICC Statute⁷. It is an offence against the law of England and Wales⁸ for a person⁹ to commit a war crime¹⁰. It is also an offence against the law of England and Wales for a person to engage in conduct ancillary to a war crime but which, being committed (or intended to be committed) outside England and Wales, does not constitute such an offence¹¹.

1 The International Criminal Court is the first permanent, treaty based, international criminal court established to deal with the most serious humanitarian crimes. At the end of World War II international tribunals were established at Nuremberg and Tokyo to try humanitarian crimes arising from that war. Subsequently ad hoc tribunals have been established by the United Nations to try crimes committed during particular conflicts, for example the International Criminal Tribunal for the former Yugoslavia (ICTY) (see www.icty.org) and the International Criminal Tribunal for Rwanda (ICTR) (see www.ictr.org). The International Criminal Court was created under the Statute of the International Criminal Court (Rome 17 July 1998; Cm 4555). The Rome Statute entered into force on 1 July 2002. The ICC is a court of last resort. It will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, and it only tries those accused of the gravest crimes. For further information about the court and for a copy of the Rome Statute see the court's website at www.icc-cpi.int. See also **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 463 et seq.

2 See the Statute of the International Criminal Court (Rome 17 July 1998; Cm 4555) art 5(1)(c).

3 See the Statute of the International Criminal Court (Rome 17 July 1998; Cm 4555) art 8(1).

4 See the Statute of the International Criminal Court (Rome 17 July 1998; Cm 4555) art 8(2)(b)(ix). For an example of a case involving allegations of the destruction or wilful damage of cultural buildings and objects see case IT-01-42 *The Prosecutor of the International Criminal Tribunal for the former Yugoslavia v Strugar*. Copies of the indictment and other papers relating to the case can be found on the tribunal's website at www.icty.org.

5 In the Statute of the International Criminal Court (Rome 17 July 1998; Cm 4555): see the text to notes 1-4.

6 As to the meaning of 'United Kingdom' see PARA 804 note 2.

7 See the International Criminal Court Act 2001 Explanatory Memorandum. As to the International Criminal Court Act 2001 see further **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 438 et seq.

8 As to the meaning of 'England' see PARA 804 note 2. As to the meaning of 'Wales' see PARA 802 note 4.

9 As to the meaning of 'person' see PARA 803 note 16.

10 See the International Criminal Court Act 2001 s 51(1); and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 454. This provision applies to acts committed in England or Wales, or outside the United Kingdom by a United Kingdom national, a United Kingdom resident or a person subject to UK service jurisdiction: s 51(2). 'War crime' means a war crime as defined in the Statute of the International Criminal Court (Rome 17 July 1998; Cm 4555) art 8.2 (see the text to note 4): International Criminal Court Act 2001 s 50(1).

11 See the International Criminal Court Act 2001 s 52(1), (2); and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 454.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/5. GENERAL PROVISIONS/(1) CULTURAL HERITAGE AND ARMED CONFLICT/1105. The Convention for the Protection of Cultural Property in the Event of Armed Conflict.

1105. The Convention for the Protection of Cultural Property in the Event of Armed Conflict.

The Convention for the Protection of Cultural Property in the Event of Armed Conflict¹ is the principal international instrument devoted specifically to the protection of cultural property in armed conflict. For the purposes of the Convention, 'cultural property' means, irrespective of origin or ownership:

- 484 (1) moveable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- 485 (2) buildings whose main and effective purpose is to preserve or exhibit the moveable cultural property defined in head (1) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the moveable cultural property defined in head (1)²;

and the protection of cultural property comprises the safeguarding of and respect for such property³.

The state parties to the Convention undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict⁴; to respect cultural property situated within their own territory and that of other state parties⁵; when in occupation of the whole or part of the territory of another state party, to support the competent national authorities of the occupied country in safeguarding and preserving its cultural property⁶; and to introduce into their military regulations or instructions such provisions as may ensure observance of the Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples⁷. The Convention is supported by two protocols: the purpose of the First Protocol is to prevent state parties from exporting cultural property from territories occupied by them during armed conflict, and to provide for the return of cultural property deposited with a third state for safekeeping during a conflict⁸; and the purpose of the Second Protocol is to improve the application and effectiveness of the Convention⁹.

The United Kingdom government did not ratify the Convention, but announced in May 2004 its intention to do so and to accede to both its protocols. The government subsequently issued a consultation paper as to the most suitable way to achieve this¹⁰.

1 See the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954). A copy of the Convention and its two protocols is available on the UNESCO website at www.unesco.org.

2 Convention for the Protection of Cultural Property in the Event of Armed Conflict art 1.

3 Convention for the Protection of Cultural Property in the Event of Armed Conflict art 2.

4 See the Convention for the Protection of Cultural Property in the Event of Armed Conflict art 3.

- 5 See the Convention for the Protection of Cultural Property in the Event of Armed Conflict art 4.
- 6 See the Convention for the Protection of Cultural Property in the Event of Armed Conflict art 5.
- 7 See the Convention for the Protection of Cultural Property in the Event of Armed Conflict art 7.
- 8 See the Protocol for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954).
- 9 See the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999 (The Hague, 26 March 1999).
- 10 See *Consultation Paper on the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999* (Department for Culture, Media and Sport, September 2005). A copy of the consultation paper is available on the DCMS website at www.culture.gov.uk.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/5. GENERAL PROVISIONS/(2) EUROPEAN CULTURAL CONVENTION/1106. The European Cultural Convention.

(2) EUROPEAN CULTURAL CONVENTION

1106. The European Cultural Convention.

The European Cultural Convention¹ is designed to foster among the nationals of all member states of the Council of Europe², and of such other European states as may accede thereto, the study of the languages, history and civilisation of the others and of the civilisation which is common to them all³. Each state party to the convention⁴ undertakes to:

- 486 (1) take appropriate measures to safeguard and to encourage the development of its national contribution to the common cultural heritage of Europe⁵;
- 487 (2) in so far as may be possible, to encourage the study by its nationals of the languages, history and civilisation of the other contracting states and grant facilities to those states to promote such studies in its territory; and endeavour to promote the study of its language or languages, history and civilisation in the territory of the other contracting states and grant facilities to the nationals of those states to pursue such studies in its territory⁶;
- 488 (3) consult with other contracting states within the framework of the Council of Europe with a view to concerted action in promoting cultural activities of European interest⁷;
- 489 (4) in so far as may be possible, facilitate the movement and exchange of persons as well as of objects of cultural value so heads (2) and (3) above may be implemented⁸;
- 490 (5) regard the objects of European cultural value placed under its control as integral parts of the common cultural heritage of Europe, and take appropriate measures to safeguard them and to ensure reasonable access thereto⁹.

1 In the European Cultural Convention (Paris, 19 December 1954).

2 As to the Council of Europe see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 534.

3 European Cultural Convention (Paris, 19 December 1954) preamble.

4 The convention was ratified by the United Kingdom on 5 May 1955.

5 European Cultural Convention (Paris, 19 December 1954) art 1.

6 European Cultural Convention (Paris, 19 December 1954) art 2.

7 European Cultural Convention (Paris, 19 December 1954) art 3.

8 European Cultural Convention (Paris, 19 December 1954) art 4.

9 European Cultural Convention (Paris, 19 December 1954) art 5.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/5. GENERAL PROVISIONS/(3) TAXATION/1107. Acceptance of property in satisfaction of inheritance tax.

(3) TAXATION

1107. Acceptance of property in satisfaction of inheritance tax.

On the application of any person¹ liable to pay inheritance tax or interest thereon, the Commissioners for Her Majesty's Revenue and Customs² may, if they think fit and the Secretary of State³ agrees, accept in satisfaction of the whole or any part of it any such land as may be agreed upon between the Commissioners and the person liable to pay tax⁴. These provisions also apply to any objects which are or have been kept in any building:

- 491 (1) if the Commissioners have determined to accept or have accepted that building in satisfaction or part satisfaction of tax or of estate duty; or
- 492 (2) if the building or any interest in it belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belongs to the Duchy of Cornwall or belongs to a Government department or is held for the purposes of a Government department; or
- 493 (3) if the building is one of which the Secretary of State is guardian under the Ancient Monuments and Archaeological Areas Act 1979⁵; or
- 494 (4) if the building belongs to any specified body⁶,

in any case where it appears to the Secretary of State desirable for the objects to remain associated with the building⁷. The provisions also apply to:

- 495 (a) any picture, print, book, manuscript, work of art, scientific object or other thing which the Secretary of State is satisfied is pre-eminent for its national, scientific, historic or artistic interest; and
- 496 (b) any collection or group of pictures, prints, books, manuscripts, works of art, scientific objects or other things if the Secretary of State is satisfied that the collection or group, taken as a whole, is pre-eminent for its national, scientific, historic or artistic interest⁸.

Any property accepted in satisfaction of tax⁹ must be disposed of as the Secretary of State or, in relation to Wales, the Welsh Ministers¹⁰ may direct; and he or they may direct that it must be transferred (either directly or indirectly) to any of certain institutions or bodies willing to accept it, including any body having as its purpose, or one of its purposes, the provision, improvement or preservation of amenities enjoyed or to be enjoyed by the public or the acquisition of land to be used by the public¹¹.

1 As to the meaning of 'person' see PARA 803 note 16.

2 As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

3 As to the Secretary of State see PARA 802.

4 See the Inheritance Tax Act 1984 s 230(1), (2) (both amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50); and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 680. As to exemptions from inheritance tax see PARA 1108.

5 As to guardianship under the Ancient Monuments and Archaeological Areas Act 1979 see PARA 1028.

6 **I**e any body within the Inheritance Tax Act 1984 Sch 3. The relevant bodies for the purpose of this title are: the National Gallery; the British Museum; the National Museum of Wales; any other similar national institution which exists wholly or mainly for the purpose of preserving for the public benefit a collection of scientific, historic or artistic interest and which is approved for these purposes by the Treasury; any museum or art gallery in the United Kingdom which exists wholly or mainly for that purpose and is maintained by a local authority or university in the United Kingdom; any library the main function of which is to serve the needs of teaching and research at a university in the United Kingdom; the Historic Buildings and Monuments Commission for England; the National Trust for Places of Historic Interest or Natural Beauty; the National Art Collections Fund; the Trustees of the National Heritage Memorial Fund: see Sch 3.

7 See the Inheritance Tax Act 1984 s 230(3) (amended by SI 1992/1311; SI 1995/1625); and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 680.

8 See the Inheritance Tax Act 1984 s 230(4) (amended by SI 1992/1311); and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 680. 'National interest' includes interest within any part of the United Kingdom; and in determining whether an object or collection or group of objects is pre-eminent, regard must be had to any significant association of the object, collection or group with a particular place: Inheritance Tax Act 1984 s 230(5). As to the meaning of 'United Kingdom' see PARA 804 note 2.

9 As to the acceptance of property in satisfaction of tax under the National Heritage Act 1980 ss 8-13 see further **INHERITANCE TAXATION** vol 24 (Reissue) PARA 682.

10 The functions of the Secretary of State under the National Heritage Act 1980 s 9, in so far as they relate to Wales, were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the Welsh Ministers see PARA 802. As to the meaning of 'Wales' see PARA 802 note 4.

11 See the National Heritage Act 1980 s 9 (amended by SI 1992/1311; and the National Heritage Act 1997 s 3, Schedule para 2); and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 682.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/5. GENERAL PROVISIONS/(3) TAXATION/1108. Exemptions from inheritance tax.

1108. Exemptions from inheritance tax.

For the purposes of inheritance tax, a transfer of value is an exempt transfer to the extent that the value transferred by it is attributable to property which is given to charities¹ or which becomes the property of certain specified bodies².

The Commissioners for Her Majesty's Revenue and Customs³ may designate as being eligible for conditional exemption from inheritance tax⁴, the following:

- 497 (1) any relevant object which appears to the Commissioners to be pre-eminent for its national, scientific, historic or artistic interest;
- 498 (2) any collection or group of relevant objects which, taken as a whole, appears to the Commissioners to be pre-eminent for its national, scientific, historic or artistic interest;
- 499 (3) any land which in the opinion of the Commissioners is of outstanding scenic or historic or scientific interest;
- 500 (4) any building for the preservation of which special steps should in the opinion of the Commissioners be taken by reason of its outstanding historic or architectural interest; and any area of land which in their opinion is essential for the protection of the character and amenities of such a building;
- 501 (5) any object which in the opinion of the Commissioners is historically associated with such a building as is mentioned in head (4) above⁵.

The exemption is conditional upon certain undertakings being given⁶.

1 See the Inheritance Tax Act 1984 s 23; and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 520.

2 See the Inheritance Tax Act 1984 s 25; and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 523. The specified bodies are those within Sch 3: see PARA 1107 note 6.

3 As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

4 See the Inheritance Tax Act 1984 s 31(1) (amended by virtue of the Finance Act 1985 s 95(1); Commissioners for Revenue and Customs Act 2005 s 50); and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 535 et seq.

5 See the Inheritance Tax Act 1984 s 31(1)(a)-(e) (amended by the Finance Act 1998 s 142, Sch 25 para 4).

6 See the Inheritance Tax Act 1984 s 31(4) (amended by the Finance Act 1985 s 94, Sch 26 para 2(2), (3)), Inheritance Tax Act 1984 s 31(4A)-(4G) (s 31(4A)-(4F) added by the Finance Act 1985 s 94, Sch 26 para 2(4); Inheritance Tax Act 1984 s 31(4FA), (4FB) added by the Finance Act 1998 s 142, Sch 25 paras 5, 6; Inheritance Tax Act 1984 s 31(4G) added by the Finance Act 1986 s 101, Sch 19 P 1 para 8, and amended by the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 8(2)); and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 536.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/5. GENERAL PROVISIONS/(3) TAXATION/1109. Other exemptions from tax.

1109. Other exemptions from tax.

Income which forms part of the income of a charity¹ or which is applicable to charitable purposes only may be granted exemption from income tax and corporation tax so far as it is applied to charitable purposes only². On a claim in that behalf to the Commissioners for Her Majesty's Revenue and Customs³, such exemption from tax as falls to be allowed in the case of a charity the whole income of which is applied to charitable purposes must be allowed in the case of:

- 502 (1) the trustees of the National Heritage Memorial Fund⁴, the Historic Buildings and Monuments Commission for England⁵, the trustees of the British Museum⁶ and the trustees of the Natural History Museum⁷;
- 503 (2) an association which has as its object the undertaking of research and development⁸ which may lead to or facilitate an extension of any class or classes of trade⁹, and of which the constitution¹⁰ precludes the direct or indirect payment or transfer to members of any of its income or property by way of dividend, gift, division, bonus or otherwise by way of profit¹¹.

Charities and certain heritage bodies are exempt from tax in respect of chargeable gains¹² and inheritance tax¹³.

Whilst there is no general exemption of value added tax for charities and heritage bodies, certain supplies and exports by charities are zero-rated¹⁴, and educational¹⁵ and health supplies are exempt¹⁶. Certain supplies of works of art are also exempt¹⁷, as are fund raising events by charities and other qualifying bodies¹⁸. The supply by certain bodies of a right of admission to a museum, art gallery, art exhibition or zoo, or to a theatrical, musical or choreographic performance of a cultural nature is also an exempt supply¹⁹.

Conveyances, transfers or leases to charitable trustees, or to the Trustees of the National Heritage Memorial Fund, are exempt from stamp duty²⁰; and for the purpose of stamp duty relief²¹, the Historic Buildings and Monuments Commission for England is treated as a body of persons established for charitable purposes only²².

1 For these purposes, 'charity' means any body of persons or trust established for charitable purposes only: Income and Corporation Taxes Act 1988 s 506(1).

2 See the Income and Corporation Taxes Act 1988 s 505; and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1177 et seq.

3 As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

4 As to the National Heritage Memorial Fund see PARA 815.

5 As to the Historic Buildings and Monuments Commission for England see PARA 803 et seq.

6 As to the British Museum see PARA 825.

7 See the Income and Corporation Taxes Act 1988 s 507(1)(a)-(d) (added by the Finance Act 1989 s 60(1), (4); amended by the Museums and Galleries Act 1992 s 11(2), Sch 8 para 1(1), (2), (8)); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1175. As to the Natural History Museum see PARA 825.

8 'Research and development' means activities that fall to be treated as research and development in accordance with generally accepted accounting practice: Income and Corporation Taxes Act 1988 ss 508(3), 837A(2) (s 508(3) substituted by the Finance (No 2) Act 2005 s 13(1), (5); Income and Corporation Taxes Act 1988 s 837A(2) added by the Finance Act 2000 s 68, Sch 19 Pt I para 1; amended by the Finance Act 2002 s 103(4)(a)).

9 'Trade' includes every trade, manufacture, adventure or concern in the nature of trade: Income and Corporation Taxes Act 1988 s 832(1).

10 Ie the memorandum of association or other similar instrument regulating the association's functions: see the Income and Corporation Taxes Act 1988 s 508(1)(b).

11 See the Income and Corporation Taxes Act 1988 s 508(1)(a), (b) (s 508(1)(a) substituted by the Finance (No 2) Act 2005 s 13(1), (2)); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1176.

12 See the Taxation of Chargeable Gains Act 1992 s 271(6), (7); and **CAPITAL GAINS TAXATION** vol 5(1) (2004 Reissue) PARA 285. See also ss 256, 257; and **CAPITAL GAINS TAXATION** vol 5(1) (2004 Reissue) PARAS 279-280.

13 See PARA 1108. As to the acceptance of property in satisfaction of inheritance tax and the designation of conditionally exempt property see PARA 1107.

14 See the Value Added Tax Act 1994 s 30(2), Sch 8 Pt II Group 15; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 188. Books etc are also zero-rated: see Sch 8 Pt II Group 3; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 177.

15 See the Value Added Tax Act 1994 s 31(1), Sch 9 Pt II Group 6; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 165.

16 See the Value Added Tax Act 1994 Sch 9 Pt II Group 7; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 166.

17 See the Value Added Tax Act 1994 Sch 9 Pt II Group 11; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 170.

18 See the Value Added Tax Act 1994 Sch 9 Pt II Group 12; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 171.

19 See the Value Added Tax Act 1994 Sch 9 Pt II Group 13; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 172.

20 See the Finance Act 1982 s 129; and **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1093.

21 Ie for the purposes of the Finance Act 1982 s 129: see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1093.

22 See the Finance Act 1983 s 46(3)(c) (amended by the Income and Corporation Taxes Act 1988 s 844(1), Sch 29 para 32; and the Finance Act 1985 s 98(6), Sch 27); and **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1093.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/6. THE ORDNANCE SURVEY/1110. Introduction.

6. THE ORDNANCE SURVEY

1110. Introduction.

Ordnance Survey is Great Britain's national mapping agency. It is a government department and executive agency reporting to the Secretary of State for Communities and Local Government and has trading fund status¹. It is responsible for creating and updating the master map of Great Britain, from which it produces and markets a wide range of digital map data and paper maps for business, leisure, educational and administrative use².

Ordnance Survey was created in 1791 with the aim of producing accurate maps for military purposes but is no longer a military operation. The Ordnance Survey Act 1841 was passed to authorise and facilitate the completion of a survey of Great Britain³.

The Director General of Ordnance Survey is the chief executive and is appointed by the Secretary of State for Communities and Local Government through open competition⁴. The Director General of the Ordnance Survey is one of the assessors for the Boundary Commission for England and the Boundary Commission for Wales⁵.

1 See the *Annual Report of the Department for Communities and Local Government 2008* Annex D. A copy of the report is available on the Department for Communities and Local Government website at www.communities.gov.uk. See also the *Ordnance Survey Framework Document* (July 2004) a copy of which is available on the Ordnance Survey website at www.ordnancesurvey.co.uk. As to executive agencies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 551. As to the trading fund status of the Ordnance Survey see the Ordnance Survey Trading Fund Order 1999, SI 1999/965 (amended by SI 2006/2835). As to trading funds see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 743.

2 See the *Annual Report of the Department for Communities and Local Government 2008* Annex D.

3 See the Ordnance Survey Act 1841 long title. The Act no longer applies to the Isle of Man: Ordnance Survey Act 1841 long title (amended by the Statute Law (Repeals) Act 1993). See further PARAS 1112-1117. As to the completion of the geological survey of Great Britain and Ireland see the Geological Survey Act 1845; and PARA 970.

4 See the *Ordnance Survey Framework Document* (July 2004) para 2.2. This provision refers to the Deputy Prime Minister whose functions are now vested in the Secretary of State for Communities and Local Government: see the text to note 1.

5 See the Parliamentary Constituencies Act 1986 s 2(2), Sch 1 para 5 (s 2, Sch 1 repealed, as from a day to be appointed, by the Political Parties, Elections and Referendums Act 2000 ss 158(2), 163(2), Sch 22); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 68. At the date at which this volume states the law no such day had been appointed.

UPDATE

1110 Introduction

NOTE 1--SI 1999/965 further amended: SI 2010/1096.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/6. THE ORDNANCE SURVEY/1111. Ordnance survey maps as evidence.

1111. Ordnance survey maps as evidence.

Ordnance survey¹ maps are not evidence as to the boundaries of parishes², or as to boundaries between private owners³. Such maps may, however, be used to show the position of features at the time the survey was taken⁴.

1 As to the Ordnance Survey see PARA 1110.

2 *Bidder v Bridges* (1885) 54 LT 529. See also PARA 1117.

3 *Coleman v Kirkaldy* [1882] WN 103. See also PARA 1117.

4 See *A-G and Croydon RDC v Moorsom-Roberts* (1908) 72 JP 123 (position of fence); *Caton v Hamilton* (1889) 53 JP 504 (position of fence line); *A-G v Antrobus* [1905] 2 Ch 188 (position of visible track); *Great Torrington Commons Conservators v Moore Stevens* [1904] 1 Ch 347 (position of the medium filum of a river). As to the presumption of ownership of non-tidal waters to the centre line of the stream (ie usque ad medium filum aquae) see **WATER AND WATERWAYS** vol 100 (2009) PARA 74.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/6. THE ORDNANCE SURVEY/1112. Appointment of persons to assist in ascertaining boundaries.

1112. Appointment of persons to assist in ascertaining boundaries.

A local authority¹ may, for the purpose of enabling the Ordnance Survey² to make and complete surveys and maps of England, on the application in writing of any officer appointed by the Ordnance Survey, nominate and appoint one or more persons to aid and assist, when required, any so appointed officer in examining, ascertaining, and marking out the reputed boundaries of each area³. Such person must from time to time act under and obey the directions he receives from the officer or other person appointed by the Ordnance Survey to make such surveys and maps⁴.

1 This power was originally exercisable by the justices assembled at quarter sessions. These were abolished by the Courts Act 1971 s 3 (repealed). Any function of courts of quarter sessions, or of committees of quarter sessions which relates to any matter which is not of a judicial nature is transferred to the local authorities for the areas to which those matters relate: s 3 (repealed), s 56(1), Sch 8 para 1(1)(c).

2 As to the Ordnance Survey see PARA 1110.

3 Ordnance Survey Act 1841 s 1 (amended by the Statute Law Revision (No 2) Act 1890; and the Statute Law (Repeals) Act 1993). The Ordnance Survey Act 1841 s 1 specifies such areas as any county, city, borough, town, parish, burghs royal, parliamentary burghs, burghs of regality and barony, extra-parochial and other places, districts, and divisions in England.

4 Ordnance Survey Act 1841 s 1 (amended by the Statute Law (Repeals) Act 1993).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/6. THE ORDNANCE SURVEY/1113. Entry to lands to carry on survey.

1113. Entry to lands to carry on survey.

Any person appointed by the local authority¹, and any other person acting under the orders of such a person, and any officer or person appointed by or acting under the orders of the Ordnance Survey² (the 'appointed person'), is authorised (written notice of intention to enter having been given to the owner or occupier) to enter any estate or property of any county, or any body politic or corporate, ecclesiastical or civil, or into and upon any land, ground, or heritages of any person or persons for the purpose of making and carrying on any survey authorised by the Ordnance Survey Act 1841, or by the order of the Ordnance Survey³. He is also authorised to enter to fix any mark or object⁴ to be used in the survey, and to fix any such object in any such estate or property, land or ground, or heritages, and to dig up any ground, for the purpose of fixing any such object for such purpose, and also to enter such estates, through which any such appointed person, deems it necessary and proper to carry any boundary line for the purposes of the Act at any reasonable time in the day, until the surveying, ascertaining, and marking out of any reputed boundary line is completed⁵. However, in every case in which it is necessary for any appointed person, or his assistant or assistants, to fix any such object within any walled garden, orchard, or pleasure ground, he must give three days' notice to the occupier of his intention to do so⁶. The occupier may employ any person whom he thinks fit to fix the object within the garden, orchard, or pleasure ground, at such time, in such place or places, and in such manner, as the appointed person or his assistant or assistants directs⁷. However, the appointed person or his assistant or assistants and workmen must do as little damage as may be in the execution of the powers granted by the Ordnance Survey Act 1841, and must make satisfaction to the owners or occupiers of such lands, grounds, and heritages, or owners of trees, which are any way hurt, damaged, or injured, for all damage sustained⁸. Disputes between the appointed person and the owner or occupier (as the case may be) as to the amount of damage sustained, must be ascertained and determined by a magistrates' court; and any owner or occupier who is aggrieved by the decision of the magistrates' court may appeal against it to the Crown Court⁹.

1 As to such appointments see PARA 1112.

2 As to the Ordnance Survey see PARA 1110.

3 Ordnance Survey Act 1841 s 2 (amended by the Statute Law (Revision) (No 2) Act 1890).

4 This includes any post, stone, or boundary mark: see the Ordnance Survey Act 1841 s 2.

5 Ordnance Survey Act 1841 s 2.

6 Ordnance Survey Act 1841 s 2.

7 Ordnance Survey Act 1841 s 2.

8 Ordnance Survey Act 1841 s 2.

9 Ordnance Survey Act 1841 s 2 (amended by the Courts Act 1971 s 56(2), (4), Sch 9 Pt I, Sch 11 Pt IV; Courts Act 2003 s 109(1), Sch 8 para 11(a)). As to magistrates' courts see **MAGISTRATES** vol 29(2) (Reissue) PARA 583 et seq. As to the Crown Court see **COURTS** vol 10 (Reissue) PARA 621 et seq.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/6. THE ORDNANCE SURVEY/1114. Local authority clerk to attend surveyor on 21 days' notice.

1114. Local authority clerk to attend surveyor on 21 days' notice.

For the purpose of surveying, ascertaining, and marking out the reputed boundaries of any county, any appointed person¹ may require the attendance of any and every such clerk of the local authority² in or for any and every such county or adjoining county, either in the same or any adjoining county, at such time (not being less than 21 days after the notice) and at such place as specified in the notice, and to produce to the appointed person any books, maps, papers, or other documents, in his custody or possession as clerk of the local authority³. Every such clerk of the local authority must attend and assist the appointed person, but is not obliged to attend at such time or at such place or in such manner as interferes with the proper discharge of his ordinary duties as clerk of the local authority, nor may he be called upon to produce any books, maps, papers, or other documents, the production of which can in any way injuriously affect the interests of each such county⁴.

1 As to the appointed person see PARA 1112.

2 Ie by notice in writing signed with the appointed person's name, and directed and delivered to any such clerk of the local authority: Ordnance Survey Act 1841 s 5 (amended by the Statute Law Revision (No 2) Act 1888). The Ordnance Survey Act 1841 s 5 refers to the clerk of the peace, whose office was abolished by the Courts Act 1971 s 44(1)(a). Any function of the clerks of the peace or deputy clerks of the peace relating to: (1) the deposit of plans or documents, other than those relating to judicial business; (2) the keeping of records other than those relating to judicial business; or (3) any other matter which is not of a judicial nature, are transferred to the clerks of the local authorities for the areas to which those matters relate: s 56(1), Sch 8 para 1(1), (2). As to the Ordnance Survey see PARA 1110.

3 Ordnance Survey Act 1841 s 5.

4 Ordnance Survey Act 1841 s 5 (amended by the Courts Act 1971 s 56(4), Sch 11 Pt IV).

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/6. THE ORDNANCE SURVEY/1115. Removing or defacing boundary stones.

1115. Removing or defacing boundary stones.

If any person not duly authorised takes away, removes, displaces, or alters the situation of any boundary stone, post, block, bolt, or mark, which is set up and placed for the purposes of the Ordnance Survey Act 1841¹ he is guilty of an offence².

1 As to the marking of boundaries etc see PARA 1113. As to the Ordnance Survey see PARA 1110.

2 Ordnance Survey Act 1841 s 7 (amended by the Statute Law Revision (No 2) Act 1888; the Statute Law Revision Act 1892; Criminal Damage Act 1971 s 11(8), Schedule Pt II). The penalty for such an offence is, on summary conviction, a fine not exceeding level 1 on the standard scale: Ordnance Survey Act 1841 s 7 (amended by the Statute Law (Repeals) Act 1993). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/6. THE ORDNANCE SURVEY/1116. Obstruction of the survey.

1116. Obstruction of the survey.

If any person wilfully obstructs or hinders any person in the execution of the Ordnance Survey Act 1841¹ he is guilty of an offence².

1 As to powers under the Ordnance Survey see PARAS 1112-1114. As to the Ordnance Survey see PARA 1110.

2 Ordnance Survey Act 1841 s 8 (amended by the Summary Jurisdiction Act 1884 s 4, Schedule; the Statute Law Revision (No 2) Act 1888; Statute Law Revision Act 1892). The penalty for such an offence is, on summary conviction, a fine not exceeding level 1 on the standard scale: Ordnance Survey Act 1841 s 8 (amended by the Statute Law (Repeals) Act 1993). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/NATIONAL CULTURAL HERITAGE (VOLUME 77 (2010) 5TH EDITION)/6. THE ORDNANCE SURVEY/1117. Boundaries and rights of property.

1117. Boundaries and rights of property.

The Ordnance Survey Act 1841¹ does not extend to ascertain, define, alter, enlarge, increase or decrease, or affect in any way, any boundary or boundaries of any area², or the boundary or boundaries of any land or property, with relation to any owner or owners, or claimant or claimants of any such land respectively, or affect the title of any such owner or owners, or claimant or claimants respectively, to any such lands or property³.

1 As to the Ordnance Survey see PARA 1110.

2 Ie of any county, city, borough, town, parish, burghs royal, parliamentary burghs, burghs of regality and barony, extra-parochial and other places, districts, and divisions: see the Ordnance Survey Act 1841 s 12.

3 Ordnance Survey Act 1841 s 12 (amended by the Statute Law Revision (No 2) Act 1888; Statute Law (Repeals) Act 1993).